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Supreme Court of the United States

OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN AND SOLOMON H. FELDMAN, EXECUTORS OF THE ESTATE OF MAX R. MORRIS, DECEASED, APPELLANTS,

vs.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FILED JANUARY 27, 1954

PROBABLE JURISDICTION NOTED MARCH 8, 1954

SUPREME COURT OF THE UNITED STATES

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[fol. a] [Caption omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[fol. 1] [File endorsement omitted]

Civil Action No. 476–53

MAX R. MORRIS, 320 Decatur Street, N. W., Washington, D. C., Plaintiff,

vs.

MARK LANSBURGH, 499 Pennsylvania Avenue, N. W., Washington, D. C.; John A. Remon, 499 Pennsylvania Avenue, N. W., Washington, D. C.; James E. Colliflower, 499 Pennsylvania Avenue, N. W., Washington, D. C.; Richard R. Atkinson, 499 Pennsylvania Avenue, N. W., Washington, D. C.; Francis F. Healy, 499 Pennsylvania Avenue, N. W., Washington, D. C., Members Comprising the District of Columbia Redevelopment Land Agency, and The District of Columbia Redevelopment Land Agency, a Corporation, and Joseph D. Lohman, 18th and C Streets, N. W., Washington, D. C.; John A. Remon, 18th and C Streets, N. W., Washington, D. C.; Conrad L. Wirth, 18th and C Streets, N. W., Washington, D. C.; Louis W. Prentiss, 18th and C Streets, N. W., Washington, D. C.; Samuel D. Sturgis, 18th and C Streets, N. W., Washington, D. C.; Francis Case, 18th and C Streets, N. W., Washington, [fol. 2] D. C.; Sid Simpson, 18th and C Streets, N. W., Washington, D. C.; W. E. Reynolds, 18th and C Streets, N. W., Washington, D. C.; Thomas H. MacDonald, 18th and C Streets, N. W., Washington, D. C.; Frederick Bigger, 18th and C Streets, N. W., Washington, D. C.; Albert P. Greenfelder, 18th and C Streets, N. W., Washington, D. C.; Hilyard R. Robinson, 18th and C Streets, N. W., Washington, D. C., Members Comprising the National Capital Park and Planning Commission, and F. Joseph Donohue, 14th and E Streets, N. W., Washington, D. C.; Renah F. Camalier, 14th and E Streets, N. W., Washington, D. C.; Louis W. Prentiss, 14th and E Streets,

N. W., Washington, D. C., Members Comprising the Board of Commissioners of the District of Columbia, Defendants

COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTION, MANDATORY INJUNCTION, AND DECLARATORY JUDGMENT—Filed February 2, 1953

1. This Court has jurisdiction under Sections 11-305 and 11-306, District of Columbia Code, 1951 Edition.

2. Plaintiff, Max R. Morris is a citizen of the United States, a resident of the District of Columbia and the owner of Lot 812, Square 587 in the District of Columbia, the same being premises 712 Fourth Street, S. W., which said property is zoned for, and is in commercial use, being improved [fol. 3] by a department store and is not in use as a dwelling, residence, house or habitation.

3. Defendants, Mark Lansburgh, John A. Remon, James E. Colliflower, Richard R. Atkinson and Francis F. Healy, are sued herein in their official capacities as the members comprising the District of Columbia Redevelopment Land Agency, and the defendant, District of Columbia Redevelopment Land Agency, is sued in its own right as a body corporate, and all are hereinafter referred to as the Redevelopment Land Agency.

4. Defendants, Joseph D. Lohman, John A. Remon, Conrad L. Wirth, Louis W. Prentiss, Samuel D. Sturgis, Francis Case, Sid Simpson, W. E. Reynolds, Thomas H. MacDonald, Frederick Bigger, Albert P. Greenfelder and Hilyard R. Robinson, are sued herein in their official capacities as members comprising the National Capital Park and Planning Commission, and are hereinafter referred to as the Park and Planning Commission.

5. Defendants, F. Joseph Donohue, Renah F. Camalier and Louis W. Prentiss, are sued herein in their official capacities as members comprising the Board of Commissioners of the District of Columbia, hereinafter referred to as the Commissioners of the District.

6. On or about October 24, 1952, the defendants, the Park and Planning Commission, purporting to act under the Act of Congress of August 2, 1946, 60 Stat. 790 (The District of Columbia Land Redevelopment Act), adopted a plan

known as "Redevelopment Plan for Southwest Redevelopment Project Area B", calling for the taking of plaintiff's commercial property without due process of law through the guise of the processes of eminent domain or otherwise for a private use, to wit, its lease or sale to private individuals, partnerships, ventures or corporations for development and use as private commercial property.

7. On or about December 30, 1952, the defendants, the Commissioners of the District, approved the aforementioned Plan for the taking of plaintiff's property for a private use and without due process of law.

[fol. 4] 8. The defendants, Redevelopment Land Agency, their agents and employees, are now proceeding or are threatening immediately to proceed through the guise of eminent domain or otherwise to seize and take the property of the plaintiff for a private use, above recited, and without due process of law, to the immediate and irreparable damage of the plaintiff, and will so proceed unless restrained or enjoined by this Court.

9. The Act of Congress of August 2, 1946, 60 Stat. 790, known as The District of Columbia Land Redevelopment Act, under which defendants are acting or are purporting to act, authorizes and orders the taking of private property not for a public but for a private use, to wit, the sale or lease of such property to private parties or corporations for their own development and private use, amounts to a taking without due process of law and is for that reason unconstitutional.

10. The administrative action of the Park and Planning Commission, the Commissioners of the District and the Redevelopment Land Agency, above recited, authorizes and orders, through the guise of eminent domain, the taking of plaintiff's private commercial property for a private use, to wit, the sale and lease of such property to private parties or corporations for their own development and private commercial use, amounts to a taking without due process of law and is for that reason unconstitutional.

11. By way of alternative, plaintiff states that the proposed and threatened taking of plaintiff's property violates the rights of the plaintiff under the Fifth Amendment of the Constitution of the United States in that the said taking,

although under the guise of official action, is not authoriz by, but is in violation of the Act of Congress cited abo in the following particulars:

(a) The statute under which defendants are proceedi to take the property of plaintiff authorizes only the taking [fol. 5] land used for housing, dwelling, habitation or re dence purposes. But the property of the plaintiff is not use for those purposes, but is in commercial use, to wit, as a department store. Hence, the taking is without d process of law, and the plan of the Park and Planning Co mission and the approval by the Commissioners of the D trict, are as respects the property of the plaintiff not a thorized by law, and are null and void.

(b) The proposed and threatened taking of plaintif property is not for a public use, as defined by the said st ute, but is, to the contrary, for a private use, to wit, the lea or sale of plaintiff's commercial property to a private par or corporation for its private development and use as co mercial property, and the plan, approval and taking order are, therefore, as regards plaintiff's property, null a void.

Wherefore, the premises considered, the plaintiff r quests that this Honorable Court:

1. Enjoin defendants, the Redevelopment Land Agenc during the pendency of this action and permanently, fro taking or proceeding to take the property of your plai tiff, known as Lot 812, Square 587, premises 712 Four Street, S. W., Washington, D. C., through the processes eminent domain or otherwise.

2. Enter a judgment declaring that the Act of Congre of the United States of August 2, 1946, 60 Stat. 790, know as The District of Columbia Land Redevelopment Act unconstitutional.

3. Enter a judgment declaring that the Act of Congre of the United States of August 2, 1946, 60 Stat. 790, know as The District of Columbia Land Redevelopment Act, implemented by Redevelopment Plan B of the Park an Planning Commission and by the approval of the said Pla B by the Commissioners of the District, is unconstitution as to this plaintiff.

4. Enter a judgment declaring that Redevelopment Plan B, insofar as it applies to the plaintiff's property, is uncon-
[fol. 6] stitutional, without authority in law and null and void.

5. Order and direct that the defendants, the Park and Planning Commission and the Commissioners of the District correct and amend Redevelopment Plan B by deleting therefrom reference to and provisions for the taking and "redevelopment" of Lot 812, Square 587, the property of the plaintiff, and

6. For such other and further relief as to this Court may seem just and proper.

James C. Toomey, Toomey & Mehler, 428 Barr Building, Washington 6, D. C., Attorneys for Plaintiff.

[fols. 7-9] *Duly sworn to by Max Morris. Jurat omitted in printing.*

[fol. 10] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR DESIGNATION OF THREE JUDGE COURT—
Filed March 3, 1953

To The Chief Judge or, in his absence, the Presiding Judge of the United States Court of Appeals for the District of Columbia Circuit, Washington, D. C.:

Plaintiff has filed a complaint seeking an injunction, together with declaratory relief, to restrain the enforcement of the provisions of the Act of Congress of August 2nd, 1946, 60 Stat. 790, known as the District of Columbia Land Redevelopment Act, on the ground that the said Act is repugnant to the Constitution of the United States. Application is hereby made to the Chief Judge, or in his absence, the Presiding Judge of the United States Court of Appeals for the District of Columbia Circuit, to designate a Three Judge Court to hear the case, as provided by Section 2284 of Title 28 of the United States Code.

It appears from the pleadings that the issues in this case are identical with the issues in the case of Schneider v. District of Columbia, et al., Civil Action 5791-52. In that case Judges Prettyman, Keech and Curran have been designated to sit. The plaintiff in the instant case has filed a motion to consolidate Morris v. District of Columbia Redevelopment Land Agency, a corporation, et al., Civil Action 476-53 with Schneider v. Distfict of Columbia, a Municipal Corporation, et al., Civil Action 5791-52.

Edward M. Curran, Judge.

[fol. 11] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

DESIGNATION OF JUDGES TO SERVE ON THREE-JUDGE COURT—Filed March 3, 1953

The Honorable Edward M. Curran, United States District Judge for the District of Columbia, having notified me that the plaintiff in the above-entitled action seeks an injunction to restrain the enforcement of the provisions of the Act of August 2, 1946, 60 Stat. 790, known as the District of Columbia Redevelopment Act of 1945, on the ground that said Act is repugnant to the Constitution of the United States,

Now, therefore, pursuant to the provisions of Section 2284 of Title 28 of the United States Code, I hereby designate the Honorable E. Barrett Prettyman, United States Circuit Judge for the District of Columbia Circuit, and the Honorable Richmond B. Keech, United States District Judge for the District of Columbia, to serve with the Honorable Edward M. Curran, United States District Judge for the District of Columbia, as members of the Court to hear and determine the above-entitled action.

Dated March 3, 1953.

Henry W. Edgerton, Acting Chief Judge, United States Court of Appeals for the District of Columbia Circuit.

[fols. 12-13] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 5791-'52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al., Defendants

Civil Action No. 476-'53

MAX R. MORRIS, Plaintiff,

v.

MARK LANSBURGH, et al., Defendants

MOTION OF DEFENDANTS TO DISSOLVE THREE JUDGE COURT—
Filed May 8, 1953

The defendants move for a dissolution of the three-judge court heretofore constituted for the following reasons:

1. No *substantial* constitutional question has been raised.
2. The Act of Congress, the constitutionality of which is under attack, is purely of local application.

Vernon E. West, Corporation Counsel, D. C.; Oliver Gasch, Assistant Corporation Counsel, D. C.; J. H. Baumgartner, Jr., Assistant Corporation Counsel, D. C.

CERTIFICATE OF SERVICE—(Omitted in Printing)

[fol. 14] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT—Filed May 11, 1953

Defendants move the Court to dismiss these complaints, for the reason that each complaint fails to state a claim upon which relief can be granted. In the alternative, defendants move the Court for summary judgment, for the reason that there is no dispute as to any material fact, and defendants are entitled to judgment as a matter of law. There are attached hereto and made a part hereof the following exhibits: Exhibit 1—Affidavit of Carl R. Nolte, certifying to the plan for redevelopment of Project Area B (blue book attached); Exhibit 2—Affidavit of Dr. Daniel L. Seckinger, Director of Public Health for the District of Columbia; Exhibit 3—Affidavit of John R. Searles, Jr., Executive Director and Secretary to Board of Directors, District of Columbia Redevelopment Land Agency, with attachments thereto.

Let this be filed May 11, 1953. Curran, J.

Leo A. Rover, United States Attorney; Ross [fol. 15] O'Donoghue, Assistant United States Attorney; Frank H. Strickler, Assistant United States Attorney, Attorneys for Redevelopment Land Agency and National Capital Planning Commission; Vernon E. West, Corporation Counsel, D. C.; Oliver Gasch, Assistant Corporation Counsel, D. C.; John H. Baumgartner, Jr., Assistant Corporation Counsel, D. C., Attorneys for District of Columbia, F. Joseph Donohue, Lewis W. Prentiss and Renah F. Camalier.

Of Counsel: George F. Reisling, General Counsel, Redevelopment Land Agency; William S. Cheatham, General Counsel, National Capital Planning Commission.

CERTIFICATE OF SERVICE—(Omitted in Printing)

[fol. 16] EXHIBIT 1 TO MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 476-53

In the Matter of MAX R. MORRIS, Plaintiff.

v.

MARK LANSBURGH et al., Defendants

AFFIDAVIT OF CARL R. NOLTE, ASSISTANT SECRETARY OF THE NATIONAL CAPITAL PLANNING COMMISSION

Comes now Carl R. Nolte, who first being duly sworn according to law, upon oath, deposes and says:

1. That he is Assistant Secretary of the National Capital Planning Commission, an independent establishment of the Government of the United States.

2. That he examined the official Redevelopment Plan and other papers, documents, prints, tables, etc., bound together therewith and has compared all of them respectively with the copy of the plan and copies of the other documents bound together with the plan and attached hereto, and finds and hereby states that the attached binder contains true copies of the plan and all the papers, documents, prints, tables, etc., as were submitted to the Commissioners of the District of Columbia for their consideration.

Carl R. Nolte, Assistant Secretary, National Capital Planning Commission.

DISTRICT OF COLUMBIA, SS.:

Carl R. Nolte, Assistant Secretary of the National Capital Planning Commission, being first duly sworn on his oath deposes and says that he has read the foregoing affidavit by him subscribed; that he knows the contents thereof; that the matters and things therein set forth of his personal knowledge are true and those set forth upon information and belief he believes to be true.

[fol. 17] Carl R. Nolte, Assistant Secretary, National Capital Planning Commission.

Subscribed and sworn to before me this 6th day of May, 1953. Lorin A. Davis, Notary Public. My Commission expires November 14, 1956.

[fol. 18] EXHIBIT 2 TO MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791-'52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al., Defendants

Civil Action No. 476-'53

MAX MORRIS, Plaintiff,

v.

MARK LANSBURGH, et al., Defendants

AFFIDAVIT OF DANIEL L. SECKINGER, M. D., Dr. P. H., DIRECTOR OF D. C. PUBLIC HEALTH

Daniel L. Seckinger, being first duly sworn on oath, deposes and says:

That he is the Director of Health for the District of Columbia; that he holds the degrees of Doctor of Medicine and Doctor of Public Health from Johns Hopkins University; that he has engaged in the practice of his profession since 1927.

He is personally familiar with conditions in Southwest Washington, particularly in that area described as Area B. He has, in company with his associates, made a study of health conditions existing in this area which is presently proposed for redevelopment. It is a slum area characterized particularly by the lack of those things which make for a good community. It contains inhabited alleys. It is over crowded to the extent that adequate living space for

families, especially those with children, is practically non-existent. The absence of open spaces providing adequate light and air is particualrly noticeable in this area. Almost all the buildings are worn out, dilapidated and lacking in [fol. 19] adequate sanitary facilites. The presence of large numbers of insects and rodents, coupled with the absence of fly screening and the lack of rat proofing, provide excellent opportunities for the spread of diseases not only in this area but into the adjacent communities. Morbidity and mortality rates for this and comparable slum areas far exceed morbidity and mortality rates elsewhere in the city. Attached hereto is a table of statistics and a diagram showing the area the statistics cover.

Failure to redevelop completely this area by the exclusion of relatively few buildings would in his opinion do much to nullify the effectiveness of the redevelopment program. In order to achieve proper and adequate living conditions in an area that has deteriorated to the extent which deponent has observed in Area B of Southwest Washington, it is extremely desirable from a public health standpoint, in fact, it is necessary, to redevelop and rebuild completely the area in question. That is the only method whereby the public health may be fully protected.

The most important considerations from a public health standpoint insofar as the redevelopment of the existing slum area is concerned are the following:

1. The need for the replacement of dilapidated, substandard, and worn out dwellings.

2. The need for providing adequate sanitary facilities for all dwellings.

3. The need for reducing area crowding and building crowding to the extent that all persons and particularly children will have adequate light and air.

[fol. 20] 4. The need to remove fundamental deficiencies which create harmful conditions and/or provide the sources from which pestilence and disease originate.

5. The desirability of a planned community which will provide the necessary space for healthful living in hygienic surroundings.

In the redevelopment of a specific area the failure to take all of the properties would jeopardize the fulfillment

of these fundamental purposes. Specifically, the failure to include all structures could nullify the community plan to the extent that the greatest benefits to the most people might not be achieved. Few if any buildings in slum areas have the necessary requisites of light, air, and sanitary facilities to make them comparable to new structures. In the years ahead such old buildings if left in redeveloped areas would become obsolete long before the general area and by reason of such obsolescence would become sore spots in the new community thereby providing the foci of new slums and the health dangers to be associated with them.

Daniel L. Seckinger, M. D., M. P. H.

Subscribed and sworn. Henry H. Laguillon, Notary Public, D. C. May 8, 1953.

[fol. 21] STATISTICS

Some specific statistics of the United States Bureau of the Census show examples of the health conditions in Census Tract #60 which includes Project Area B. They are as follows:

ALL CAUSES

1949 —	Tract #60 Death Rate	16.2%	per 100,000 pop.
	Overall, D.C. " "	9.5%	"
1950 —	Tract #60 Death Rate	17.3%	"
	Overall, D.C. " "	10.5%	"
1951 —	Tract #60 Death Rate	15.5%	"
	Overall, D.C. " "	10.1%	"

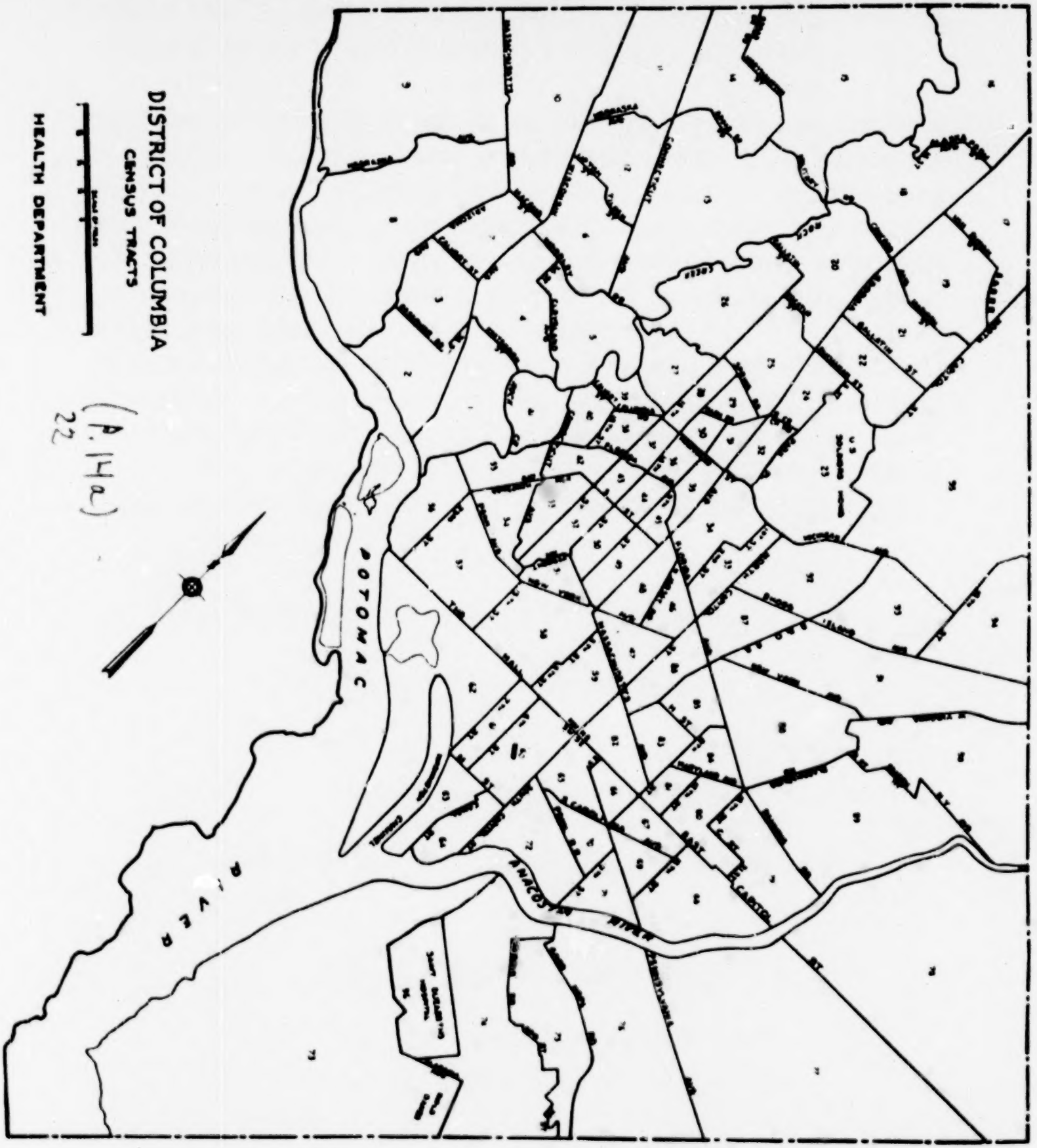
TUBERCULOSIS

1949 —	Tract #60 Death Rate	118.0%	per 100,000 pop.
	Overall, D.C. " "	52.4%	"
1950 —	Tract #60 Death Rate	136.0%	"
	Overall, D.C. " "	50.5%	"
1951 —	Tract #60 Death Rate	83.7%	"
	Overall, D.C. " "	35.5%	"

SYPHILIS

1949 —	Tract #60 Death Rate	33.7%	"
	Overall, D.C. " "	12.2%	"
1950 —	Tract #60 Death Rate	10.5%	"
	Overall, D.C. " "	9.2%	"
1951 —	Tract #60 Death Rate	41.8%	"
	Overall, D.C. " "	7.1%	"

(Page 14:) Here follows 1 photolithograph, side folio 22



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[fol 23] EXHIBIT 3 TO MOTION TO DISMISS

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action File No. 5791-'52 and
Civil Action File No. 476-'53

GOLDIE SCHNEIDER, Plaintiff

v.

DISTRICT OF COLUMBIA, et al., Defendants

MAX R. MORRIS, Plaintiff,

v.

MARK LANSBURGH, et al., Defendants

CITY OF WASHINGTON, DISTRICT OF COLUMBIA (ss)

Affidavit

John R. Searles, Jr., being first duly sworn, on his oath, deposes and says that he is, the Executive Director of, and Secretary to, Board of Directors of the District of Columbia Redevelopment Land Agency, a government corporation operating within the District of Columbia for the purpose of "replanning and rebuilding of slum, blighted and other areas," pursuant to an Act of Congress, the District of Columbia Redevelopment Act of 1945, (as amended, approved August 2, 1946); and makes the following statements knowing the contents thereof; and that this same is true to his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

The District of Columbia Redevelopment Land Agency, (hereinafter referred to as the "Land Agency"), was established by the District of Columbia Redevelopment Act of 1945, (hereinafter referred to as the "Redevelopment Act"), (Exhibit A) which became law on August 2nd, 1946. This law established the Land Agency as a corporation of perpetual duration and given important powers, to clear and

make available for redevelopment, slum and blighted areas in the District of Columbia. The Land Agency's powers are exercised by a Board of Directors consisting of five members, two appointed by the President of the United States and three others by the Board of Commissioners of the District of Columbia, (hereinafter referred to as the "D. C. Commissioners"). All five are required to be confirmed by the United States Senate. The original appoint- [fol 24] ments were made in March of 1947.

Mr. Mark Lansburgh and the Honorable George A. Garrett were the Presidential appointees and Messrs. James E. Colliflower, Richard R. Atkinson and Edward A. Dent were D. C. Commissioner's appointees. Mr. Lansburgh, Mr. Colliflower and Mr. Atkinson are still members of the Board. Mr. John A. Remon has replaced Mr. George A. Garrett as one of the Presidential appointees and Mr. Francis F. Healy has succeeded Mr. Edward A. Dent as a Commissioner's appointee.

The Redevelopment Act establishes certain conditions precedent to the exercise of the powers of the Land Agency. Section 6 of the Redevelopment Act requires the development of a comprehensive plan for the District of Columbia and its environs by the National Capital Planning Commission, (hereinafter referred to as the "Planning Commission"). Shortly after the passage of the Redevelopment Act, funds were appropriated by the Congress for the preparation of such plan and it was prepared and published in 1950.

Other conditions precedent to the exercise of the Land Agency's power are the adoption of boundaries of a redevelopment project by the Planning Commission and the approval of this adoption by the D. C. Commissioners. Then a redevelopment plan for the area must be adopted by the Planning Commission and approved by the D. C. Commissioners after a public hearing.

After these steps have been undertaken, the Planning Commission is required under Section 6 of the Redevelopment Act to certify the project area plan to the Land Agency to be carried out. The Land Agency must then acquire the land in the project area by eminent domain or otherwise and prepare it for sale, lease or transfer to

private or public bodies for rebuilding in accordance with the plan. The Redevelopment Act authorizes a 20 million dollar trust fund to finance the activities of the Agency, but this has not as yet been made available by the Congress.

On July 15, 1949 the Congress provided an alternate means of financing the operations of the Land Agency in the Housing Act of 1949, (hereinafter referred to as the "Housing Act"). (Exhibit C) Section 609 of the Housing Act provides a new Section 20 for The Redevelopment Act and provides for the full participation by the Land Agency in the federal slum clearance and urban redevelopment program established by Title I of the Housing Act.

[fol. 25] Among the forms of financial assistance provided by the Housing Act for local redevelopment activities are advances of funds for the preparation of redevelopment projects, loans for undertaking redevelopment projects and capital grants which are available to defray up to two-thirds of the net cost of completing redevelopment projects.

The Housing Act authorized the Housing and Home Finance Administrator, (hereinafter referred to as the "Administrator"), to contract with local redevelopment agencies to pay up to $500,000,000 in capital grants. One of the first Acts of the Administrator under the provisions of the Housing Act was to permit cities to request him to earmark a portion of his authority for contracting for capital grants. Accordingly, on May 16, 1950 the D. C. Commissioners requested the Administrator to earmark $2,250,000 for redevelopment in the District of Columbia. This amount was arrived at by consideration of the sharing formula devised by the Administrator and was understood to be far less than local needs. On May 29, 1950 the Administrator advised the D. C. Commissioners that he had reserved $2,250,000 of the total capital grant reservation for the District of Columbia.

The Administrator has divided advances for preparing projects in two categories. These are preliminary advances for early studies of slum areas to identify specific redevelopment projects to be undertaken and final advances for land appraisals and detailed plans for undertaking the specific projects which have been identified in the preliminary advance stage.

On December 29, 1950 the Land Agency submitted an application to the Administrator for a preliminary advance of funds to make surveys and plans and other studies necessary to identify redevelopment projects in three large slum areas in the Southeast, Southwest and Northwest sections of Washington, all coming to a point at the Nation's Capitol. This application had been approved by the D. C. Commissioners on the October 29th 1950.

The application was approved by the Administrator in early January 1951 and a contract was prepared to govern the advance funds from the Administrator to the Land [fol. 26] Agency. On January 18th the D. C. Commissioners approved the execution of this contract between the Land Agency and the Administrator. The contract was executed on January 19th and provided for a total preliminary planning advance of $170,185.00. The first installment of this amount was paid to the Land Agency on January 25, 1951.

Under the provision of the Redevelopment Act the D. C. Commissioners may authorize the Land Agency to transfer as much of the advances received by the Land Agency to the Planning Commission as the D. C. Commissioners determine are necessary for the Planning Commission to carry out its functions under the Redevelopment Act. Under such a determination by the D. C. Commissioners the Land Agency agreed in March 1951 to transfer $28,600.00 to the Planning Commission for its part in the preparation of redevelopment projects in the three survey areas.

The first studies of the Planning Commission and the Land Agency were concentrated in the Southwest Area. After these preliminary studies which included a field inspection of building condition, family characteristics and analyses of census and other data by the staffs of the Land Agecy and the Planning Commission, the Planning Commission adopted boundaries of five project areas which together covered all land in the Southwest lying South of the Pennsylvania Railroad tracks and between 9th, South Capitol, and P Street and Maine Avenue. The adopted boundaries were approved by the D. C. Commissioners on August 21, 1951.

Projects 1 and 2 lay in the eastern portion of the Southwest where the surveys had determined that the worst conditions of blight and slums existed. Project 2 to the

North lay in the proposed path of the Southwest throughway for which preliminary studies had not yet been completed. The Planning Commission and the Land Agency therefore recommended that redevelopment begin in Project Area No. 1. On September 25, 1951 the D. C. Commissioners approved an application to be made by the Land Agency to the Administrator for a final advance for Project No. 1 in an amount not to exceed $150,000.00.

[fol. 27] This application was prepared and submitted by the Land Agency to the Administrator on October 17, 1951. The application was for $149,500.00.

During the review by the Administrator of this application, the report of the Regional Highway Committee was completed and the Highway Department of the District of Columbia, the Land Agency and the Planning Commission felt that the first project should be coordinated with the high priority section of the inner-circumferential throughway described in the report of the Regional Highway Committee. Accordingly, on March 21, 1952 the Planning Commission rescinded its adoption of the five project areas and adopted the boundaries of two new project areas identified as Project A and Project B. Project A included the slum and blighted area in the western portion of the Southwest and Project B corresponded to the previous Project 2 and the northern portion of Project 1. This action was followed by a rescis-ion on the part of the Board of Commissioners of their previous approval of the five project areas and a new approval of the boundaries of Projects A and B.

On April 10, 1952 the Land Agency amended its application to the Administrator for a final advance to provide funds for final planning for Project B rather than Project No. 1.

This application was approved by the Administrator as of June 6, 1952, and the contract for the advance of funds dated June 6, 1952 was executed between the Land Agency and the Administrator.

On June 26th the D. C. Commissioners approved this action of the Land Agency. The D. C. Commissioners also determined that the Land Agency should transfer $10,000.00 of the funds received from the Administrator under the Final Advance Contract to the Planning Commission for its part in the final planning of Project Area B. This

was done. On October 24, 1952 after the completion of final plans for Project Area B, the Planning Commission adopted a redevelopment plan for the area (Exhibit 1) in accordance with Section 6 of the Redevelopment Act.

[fol. 28] In order to enable the Planning Commission to make a final determination of the slum and blighted condition of Project Area B, the Land Agency using trained inspectors under a highly qualified supervisor on its staff made a final detailed survey of every structure in the area. The survey was made using the American Public Health Association appraisal technique. This technique has been devised by the Committee on the Hygiene of Housing of the American Public Health Association and is recognized by the United States Public Health Service and others as being the most thorough of all standardized housing survey techniques. The survey showed that 64.3% of the dwellings in the area were beyond repair, 18.4% needed some major repairs and only 17.3% could be considered satisfactory. On the basis of deterioration alone 79.7% of the houses in the area were in an unsatisfactory condition. The survey also revealed that 57.8% of the dwellings depended upon outside toilets, 60.3% had no baths, 29.3% had no electricity, 82.2% had no wash basin or laundry tubs and 83.8% had no central heating.

These figures are based on a total of 1345 dwelling units in 1006 structures. These structures house a total population of 5012 of whom 97.5 are Negro. A summary of the results of the survey was considered by the Planning Commission and the D. C. Commissioners in support of the redevelopment plan for Southwest Project Area B. (Exhibit E).

The conditions of slum and blight shown so clearly by the survey using the American Public Health Association appraisal technique are emphasized and supported by the attachead affidavit by Dr. Daniel Seckinger, Director of Health of the District of Columbia. (Exhibit 6). Dr. Seckinger's affidavit demonstrates the intimate relationship between conditions of slum and blight in the Project Area and health, crime and juvenile delinquency.

Minor revisions in the boundaries of the Project area were also made by adoption at this time by the Planning Commission. On November 10th the D. C. Commissioners

[fol. 29] approved the minor boundary modifications and authorized the Land Agency to change its contract with the Administrator accordingly.

The D. C. Commissioners upon the receipt of the adopted redevelopment plan from the Planning Commission called a public hearing. The notice of the hearing was published in the Washington Evening Star newspaper on November 17th, 24th and December 1st, 8th and 15th, 1952. The hearing was called for December 17th, 1952 and was to satisfy the requirements of both Section 6(b) (2) of the Redevelopment Act and Section 105(d) of the Housing Act which was binding on the Land Agency through its contract with the Administrator. On December 17th, 1952 the D. C. Commissioners held a public hearing on the redevelopment plan for Project Area B in the District Building at 13th and E Streets, N. W. A transcript of the hearing is on file in the offices of the D. C. Commissioners.

The testimony from some 50 persons, groups and organizations presented at the public hearing was predominantly in favor of carrying out the plan for Project B. All persons or groups present at the hearing who requested to be heard were given a full opportunity by the D. C. Commissioners to make a public statement.

After the hearing, on December 30th, 1952, the D. C. Commissioners approved the redevelopment plan for Project B, and also approved the application by the Land Agency to the Administrator for loan funds and grant funds for carrying out the redevelopment plan for Project B.

On December 31st, 1952 the Planning Commission certified the adopted and approved redevelopment plan for Project B to the Land Agency for execution, thus completing the steps precedent to the exercise of the Land Agency's acquisition powers provided in Section 6 of the Redevelopment Act.

On January 30th, 1953 the Land Agency applied to the Administrator for a loan to finance its operations in accordance with the Redevelopment Act and the redevelopment plan for Project B, and for a capital grant to defray not over two-thirds of the cost of carrying out the project. The Administrator approved the application on April 3rd, 1953, and a contract dated that day has been executed providing for loans from the Administrator to the Land Agency in

an amount not to exceed $8,838,391.00 and for capital grants not to exceed $6,385,186.00. The execution of this contract was approved by the D. C. Commissioners on April 20th, 1953.

[fol. 30] On April 10th, 1953 an agreement was executed between the D. C. Commissioners and the Land Agency, whereby the D. C. Commissioners agreed to supply not less than one-third of the cost of undertaking Project B in land or public facilities or other expenditures eligible as local grants in aid as defined in the Housing Act, or to include cash payments to make up the one-third of the net project cost in their annual estimates of appropriations. (Exhibit G).

In order to provide for an orderly plan of land acquisition in Project B, the Land Agency determined that it was necessary for it to negotiate with the future purchasers or lessors of land in the project area prior to commencing acquisition. Consequently the Land Agency advertised in four Washington newspapers, The Washington Evening Star, The Washington Post, The Washington Daily News and the Washington Times-Herald that it was interested in proposals to negotiate. (Exhibit H). Such proposals to be received by the Land Agency thirty days after approval of the plan by the D. C. Commissioners. This thirty day period was extended later by action of the Board of Directors of the Land Agency to March 16, 1953, or forty-five days from the original date. Letters were received in response to the advertisement from approximately 50 persons or firms all of whom were mailed the full informational material on the making of proposals to negotiate for the purchase or lease of land in Project B. (Exhibit I).

The request for proposals (Exhibit H) set forth on page 4 the criteria on which the proposals would be evaluated. The most important of these criteria were the price to be paid for the land, the rents proposed to be charged for low rent housing units and the degree to which the proposal met the requirements and objectives of the redevelopment plan. This statement was supplemented by an announcement in the magazine of the Washington Building Congress, a medium read by members of the building industry in the Washington Metropolitan area, which set forth the request for proposals and the basis on which they would be judged.

On March 16, 1953 the Land Agency received ten proposals to negotiate for the purchase or lease of land in Project B. Four of these proposals were for the entire proj- [fol. 31] ect area. One was for the entire residential section and a portion of the retail. One was for a portion of the retail. Four were for portions of the second commercial or industrial part of the project area. The Land Agency made a thorough review of these proposals and invited the firms making proposals for the residential portion of the area to make a presentation in person to it and to other public officials including the staff of the District of Columbia Insuring Office of the FHA, the Zoning Commission, the Building Inspector and the National Capital Planning Commission. As a result of this analysis, the personal presentations, the proposals themselves and a thorough study of each, the Board of Directors of the Land Agency, on April 29, 1953 determined to accept the proposals to negotiate of the Bush Construction Company which indicated an interest in all the residential area and part of the retail, and from five other bidders all of whom now own property in the area. These are the Safeway Stores, Inc., Martin Wiegand, Inc., Eagle Transfer Company, Max Greenwald, and Rudderforth Brothers. (Exhibit K.) This combination of proposals to negotiate was accepted by the Board of Directors of the Land Agency for the following reasons:

(a) The proposals were in accord with the redevelopment plan in the judgment of the Board of Directors of the Land Agency;

(b) The rents proposed to be charged for one-third of the residential accommodations were as low as any offered and met the requirement of the Redevelopment Plan, that one-third of the new units to be provided for low rent;

(c) The return on the land to the Agency was the highest which could be obtained from any other proposal or combination of proposals, thus reducing the public cost to the greatest extent possible.

(d) The Agency was able to recognize the interest of five businesses in the area who chose to remain in the area after redevelopment and who responded to the

Agency's public call for proposals to rebuild the area after clearance of the slums and blight.

[fols. 32-91] (e) The Bush Construction Company indicated that it would assist the Agency in finding new homes for families now living in the area and not choosing to return by constructing new housing in the Washington area.

The Agency is now in the process of opening negotiations with the six companies which are intended to lead to a consummation of contracts for the disposition of the land in Project B.

District of Columbia Redevelopment Land Agency, John R. Searles Jr., Executive Director and Secretary Board of Directors.

Subscribed and sworn to before me this 8th day of May 1953. Helen L. Cavanagh, (Seal.) Notary Public, D. C.

[fol. 92] **Exhibit G to Exhibit 3**

Agreement

This Agreement, entered into as of this 10 day of April, 1953, by and between the Board of Commissioners of the District of Columbia (hereinafter called the "Commissioners") and the District of Columbia Redevelopment Land Agency (hereinafter called the "Agency").

Witnesseth that:

Whereas, the Agency, a public body and a body corporate duly created, existing and functioning under the District of Columbia Redevelopment Act of 1945, as amended, in cooperation with the Commissioners, will endeavor to undertake and develop a slum clearance and urban redevelopment project in the Southwest Redevelopment Project Area "B", (hereinafter called the "Project Area"); and

Whereas, the National Capital Planning Commission (hereinafter called the "Commission") has duly adopted on October 24, 1952, the boundaries of the Project Area in accordance with Sec. 6(b) (1) of the District of Columbia

Redevelopment Act of 1945, as amended (hereinafter called the "Redevelopment Act") which boundaries are as follows:

Beginning for the same at the intersection of the center line of South Capital Street and a prolongation of the north line of I (Eye) Street (running through the present U. S. Reservation No. 484 in use for recreation purposes and known as Randall Recreation Center) thence west on the north line of I (Eye) Street to the east line of Half Street; thence south on the east line of Half Street to the center line of I (Eye) Street; thence west on the center line of I (Eye) Street to the center line of 4th Street; thence north on the center line of 4th Street 136.58 feet to a point where the southerly line of Lot 89, Square 541, projected west, intersects the center line of 4th Street; thence east along the [fol. 93] southerly line of Lot 89, Square 541, and the westerly prolongation thereof, 155.0 feet to the east line of Lot 89 in said square; thence north along the east line of Lots 89 and 90, Square 541, to the north line of Lot 90 in said square; thence west along the north line of Lot 90 in said square and a prolongation thereof 155.0 feet to the center line of 4th Street; thence north along the center line of 4th Street 263.17 feet to a point where the north line of Lot 70, Square 497, projected east, intersects the center line of 4th Street; thence west 149.0 feet; thence south 15.27 feet; thence east 26.24 feet; thence south 70.56 feet to the center line of H Street; thence west along the center line of H Street 137.24 feet; thence north 162.33 feet; thence east 17.30 feet; thence north 80.33 feet to the south line of Lot 43, Square 497; thence west 12.24 feet to the west line of Lot 43 in said Square 497; thence north along the west line of Lot 43 in said square and a prolongation thereof to the center line of G Street; thence east along the center line of G Street 381.94 feet to a point 72.0 feet east of the east line of 4th Street; thence north 95.75 feet; thence east 3.0 feet; thence north 16.0 feet; thence east 25.0 feet; thence north 150.83 feet; thence west 25.0 feet; thence north 61.75 feet to the south line of F Street; thence east along the south line of F Street 25.0 feet; thence north 282.58 feet; thence west 25.0 feet to the

west line of Lot 16 in Square 538; thence north along the west line of said Lot 16 in Square 538 and a prolongation thereof to the center line of E Street; thence east along the center line of E Street to the southerly property line of the P. B. and W. Railroad right-of-way; thence along said southerly boundary of the P. B. and W. Railroad right-of-way to the center line of South [fol. 94] Capitol Street; thence along the center line of South Capitol Street to the point of beginning. The following described properties are to be eliminated from the above-described boundary outline; Lots 5, 6, 32, 33 and 34 in Square 643, being the property owned by the Trustees of the Friendship Baptist Church; and

Whereas, the Commission has duly adopted a redevelopment plan for the project area in accordance with Sec. 6(b) (2) of the Redevelopment Act; and

Whereas, the Commissioners have duly approved said adoptions of boundaries and redevelopment plan after a public hearing thereon in accordance with Sec. 6(b) (1) and 6(b) (2) of the Redevelopment Act; and

Whereas, said duly adopted and approved redevelopment plan has been certified by the Commission to the Agency in accordance with Sec. 6(d) of the Redevelopment Act, whereupon the Agency shall proceed to exercise its powers under the Redevelopment Act to acquire and assemble real property in the project area; and

Whereas, the Agency proposes to enter a contract with the Housing and Home Finance Administrator (hereinafter called the "Administrator") for Federal assistance under the Housing Act of 1949 (hereinafter called the "Housing Act") to exercise said powers to carry out a project (hereinafter called the "Project") in the Project Area under the Housing Act; and

Whereas, as a condition of said proposed contract, the Administrator requires assurance that local grants-in-aid will be provided equal to at least one-third of the net project cost of this project or equal to at least one-third of the aggregate of the net project costs of all projects undertaken by the Agency with Federal assistance under the Housing Act, whichever is the lesser.

[fol. 95] Now, therefore, the Commissioners and the Agency do mutually agree as follows:

Sec. 1. The Commissioners agree to provide grants-in-aid to the Project in an amount equal to at least one-third of the net project cost of the project as follows:

(a) Cause to be constructed or placed under construction all or any of the following improvements or cause to be performed or commenced all or any of the following work:

(1) A gymnasium at the Randall Junior High School at an estimated cost of $160,000, and not less than 57.5% of the actual cost thereof shall be credited to the project as grant-in-aid, estimated as $92,000;

(2) A summer-winter swimming pool at the Randall Junior High School at an estimated cost of $600,000, and not less than 57.5% of the actual cost thereof shall be credited to the project as grant-in-aid, estimated as $345,000;

(3) Necessary playground improvements in the play area adjoining Randall Junior High School at an estimated cost of $102,830, and not less than 57.5% of the actual cost thereof shall be credited to the project as grant-in-aid, estimated as $59,127;

(4) That portion of the Southwest Express Way crossing South Capitol Street and proceeding west to the western limit of the project, including approaches, at an estimated cost of $9,363,200, and not less than 33⅓% of the actual cost thereof shall be credited to the project as grant-in-aid, estimated as $3,121,066;

[fol. 96] (5) Such other improvements or facilities as may be primarily of direct benefit to the project area and necessary to serve and support new uses in the project area, or as may be of direct and substantial benefit to the project, and the entire cost or appropriate portion thereof, respectively, shall be credited to the project as grant-in-aid.

(b) Donate such land and perform such demolition or removal work or construct such site improvements in the project area as may be agreed upon by the Com-

missioners and the Agency, and the cash value of such land and the actual cost of such work and construction shall be credited to the project as grants-in-aid.

(c) If the aggregate of all amounts credited (under subsections (a) and (b) of this Section 1 and under Section 2) to this project as local grants-in-aid is, at the time final determination is made of the net project cost of this project, less than one-third of such net project cost, the Commissioners will make a cash payment of such deficiency from funds of the District of Columbia, Provided, that it is a condition precedent to the obligation of the Commissioners to make any cash payment hereunder that the net project cost of this project does not exceed eleven million dollars ($11,000,000.00).

Sec. 2. That credits towards this project for non-cash grants-in-aid which exceed the obligation of the Commissioners hereunder shall be credited towards any other project thereafter undertaken or completed; and any amounts for non-cash grants-in-aid which may have been credited towards the obligation of the Commissioners to furnish grants-in-aid for any other project, which exceed the total credits required from the Commissioners for such project, may at the option of the Commissioners be credited towards the obligation of the Commissioners with respect to this project.

[fol. 97] Sec. 3. (a) With respect to the improvements, facilities, work and donations described in Section 1 hereof, credit towards the project shall be made only if the same have been placed under construction, commenced or initiated prior to July 1, 1956, and only after the Agency has certified to the Commissioners that such improvements, facilities, work and donations meet all requirements for local grants-in-aid prescribed by Section 110 (d) of the Housing Act exclusive of the limitation contained in the last sentence of said Section 110 (d).

Provided, however, that, if the Agency shall not have transferred the land described in Section 7 below for the Southwest Expressway and for the play area adjoining Randall Junior High School described in Section 1 (a) (3) above by July 1, 1955, the date in this section shall be ex-

tended to a date which shall be one year after the date of the transfer of said land.

(b) Facilities and improvements shall be deemed to have been "placed under construction" and work shall be deemed to have "commenced" on the date an award of contract is made for any part of the facility, improvement or work, or on the date the Commissioners or the head of the appropriate District department authorizes work to be performed by District forces; and a donation shall be deemed to have been "initiated" on the date that the Commissioners and the Agency agree generally upon land to be donated even though the precise dimensions or the price have not been determined.

Sec. 4. The Commissioners agree that all improvements and facilities placed under construction and work commenced and donations initiated prior to July 1, 1956, or such later date as may be determined by the operation of the proviso to Section 3 above, shall be completed within a reasonable time thereafter.

Sec. 5. The Commissioners agree that the aforementioned swimming pool and gymnasium will be constructed in the area designated as the Randall Recreation Center.

[fol. 98] Sec. 6. It is expressly understood and agreed that the final determination of the net project cost of this project will not be made prior to July 1, 1957.

Sec. 7. That land in Squares 538, 583, 584 and N-642 extending 150 feet north of the F Street north-right-of-way line; and land in Square 585 and Square E-642 needed for the construction of the Southwest Section of the inner belt express way located in Project Area B, when acquired will be transferred, cleared of such improvements as may be mutually agreed upon, to the District of Columbia by the Agency at a price to be agreed upon by the Commissioners and the Agency and subject to the approval of the Housing and Home Finance Administration.

Sec. 8. Any sums payable hereunder by either party to the other shall not bear interest.

Sec. 9. The clause "the Commissioners will make a cash payment of such deficiency from funds of the District of Columbia", contained in Section 1(c) hereof, shall mean that upon determination of the amount of such deficiency

the Commissioners shall, as provided in Section 20(d) of the District of Columbia Redevelopment Act of 1945, as amended by Section 609 of the Housing Act of 1949, include an item for such cash payment in their annual estimates of appropriations and shall thereafter promptly make such payment from funds appropriated for such purpose.

Sec. 10. The ability of the Commissioners to place the portion of the Southwest Express way described in Section 1 (a) (4) under construction prior to July 1, 1956, is dependent upon transfer of the land described in Section 7 to the District of Columbia, cleared of such improvements as may be mutually agreed upon, prior to July 1, 1955, and the failure of the Agency to complete prior to July 1, 1955, [fol. 99] transfer of all land described in said Section 7 shall operate as an extension of the date by which the Commissioners agree to commence their undertakings and fulfill their obligations contained in this Agreement in accordance with the proviso to Section 3 (a) above.

Sec. 11. This Agreement supercedes the agreement executed between these same parties dated th 12th day of February, 1953 and numbered D. C. F.—A 630.

Sec. 12. This Agreement may be amended from time to time by mutual agreement of the parties hereto, subject to approval by the Housing and Home Finance Administrator.

In witness whereof, The Commissioners and the Agency have respectively caused this Agreement to be duly executed as of the day and year first above written.

The Commissioners of the District of Columbia, (S.) by G. M. Thornett, Secretary, Board of Commissioners; District of Columbia, Redevelopment Land Agency. (S.) by John A. Remon. (Seal.)

——. (Seal.)

Attest: ——. Approved as to form. (S.) Lee F. Doute, Assistant Corporation Counsel.

[fol. 100] Government of the District of Columbia,
Executive Offices

Washington 4, D. C.

Be it resolved by the Board of Commissioners of the District of Columbia; as follows:

(1). That the percentages specified in Section 1(a) (1)(2)(3) and (4) of the Agreement by and between the Board of Commissioners and the D. C. Redevelopment Land Agency dated April 10, 1953, are intended to be approximate only; and

(2). That it is further understood that the amount that may be recognized as an eligible local grant-in-aid for the facilities therein described is subject to the future determination of the Housing and Home Finance Administrator; and

(3). That this Resolution shall take effect immediately and be attached to such Agreement dated April 10, 1953.

Board of Commissioners of the District of Columbia,

(S.) by G. M. Thornett, Secretary to the Board.

Dated: April 28, 1953.

[fol. 101] EXHIBIT H TO EXHIBIT 3

Proposals

The District of Columbia Redevelopment Land Agency engaged in slum clearance and urban redevelopment activities in the District of Columbia intends to assemble land in the area described below and to offer said land for sale or lease. The purchaser or lessee will be required to develop the land in accordance with the specifications which are a part of the redevelopment plan adopted by the National Capital Planning Commission and to be approved by the Board of Commissioners of the District of Columbia. The area to be leased or sold is identified as Southwest Redevelopment Project Area B, is located in the Southwest section of the city and a general description follows: That

property contained within the following boundaries: by a line extending from 4th and E Streets, east on E Street to the railroad tracks on Virginia Avenue; southeast along the railroad tracks to South Capitol Street; south on South Capitol to K Street; west on K Street to Half Street; north on Half Street to I (Eye) Street; west on I (Eye) Street to 4th Street; north on 4th Street to H Street; west on H Street to a point approximately 200 feet behind the building line of the 4th Street properties; north on a line to G Street; east on G Street to 4th Street; and north on 4th Street to point of origin. The boundaries designated herein shall be taken to be the center lines of the named streets unless otherwise specified. The Land Agency is now prepared to negotiate, to the stage of a commitment, for the disposition of the land described above. Under the provisions of the District of Columbia Redevelopment Act of 1945, as amended, the Land Agency may enter contracts for the disposition of land without competitive bidding, provided it holds a public hearing prior to the execution of the contract. Proposals are, therefore, invited from individuals, corporations, partnerships, etc., interested in purchasing or leasing the land and redeveloping it in accordance with the requirements of the redevelopment plan and the specifications pertaining thereto. Detailed information with respect to the requirements of the plan and format of proposals for the purchase or lease of the land described above and other blighted land in the city will be furnished by the Land Agency upon receipt of a written request. Official; John R. Searles, Jr., Executive Director, District of Columbia Redevelopment Land Agency, 499 Pennsylvania Avenue, N. W., Washington 1, D. C.

The advertisement above was published in the four principal daily newspapers of the District of Columbia on November 17, 1952.

[fol. 102] EXHIBIT I TO EXHIBIT 3

D. C. Redevelopment Land Agency
499 Pennsylvania Avenue, N. W.
Washington 1, D. C.

November 12, 1952.

I. Requests for Proposals

The District of Columbia Redevelopment Land Agency invites proposals for the purchase or lease of land in Southwest Redevelopment Project Area B. The Land Agency is a separate corporation authorized by the Congress to acquire slum and blighted areas in the District of Columbia and to sell or lease land in these areas for redevelopment in accordance with an approved plan. In the near future, the Agency proposes to assemble land in the following described area in Southwest Washington;

Southwest Project Area B—That property contained within the following boundaries: by a line extending from 4th and E Streets, east on E Street to the railroad tracks on Virginia Avenue; Southeast along the railroad tracks to South Capitol Street; south on South Capitol to K Street; west on K Street to Half Street; north on Half Street to I (Eye) Street; west on I (Eye) Street to 4th Street; north on 4th Street to H Street; west on H Street to a point approximately 200 feet behind the building line of the 4th Street properties; north on a line to G Street; east on G Street to 4th Street; and north on 4th Street to point of origin.

The boundaries designated herein shall be taken to be center line of the named streets unless otherwise specified.

II. Time for Submission of Proposals

All proposals for the purchase or lease of land in Project Area B must be delivered to the offices of the District of Columbia Redevelopment Land Agency at 499 Pennsylvania Ave., N. W. by 2 P. M., on the thirtieth calendar day following the approval by the Board of Commissioners of the District of Columbia of the Redevelopment Plan for Southwest Redevelopment Project Area B.

Subsequent to receipt they will be presented for consideration to the Board of Directors of the Agency. No proposal will be acted on prior to this time although the staff of the Land Agency is prepared to answer questions relating to specifications governing the proposals. Additional material related to the proposal but not required herein will not be presented to the Board for consideration.
[fol. 103] The purpose of restricting the exhibits and other material, in support of proposals, is to prevent the expenditure of excessive funds for elaborate presentations. As a general rule, the Agency wishes only to have before it for considerations the same information which prompted the corporation, partnership, or individual to make the proposal. The Board will be governed in its determination to negotiate by the degree to which any proposal or proposals meet the criteria and requirements which are described herein.

III. Data To Be Furnished by the Land Agency

The Land Agency will make available to any corporation, partnership, or individual the following materials which must guide the preparation of proposals.

A. General Land Use Map of the Southwest Survey Area showing boundaries of Project Area B.

B. Land Use Map of Project Area B.

C. Map of Project Area B showing zoning changes.

D. Map of Project Area B showing streets and utilities to remain or to be constructed.

E. Topographic Map of Southwest Survey Area.

F. Specifications for Redevelopment Plan which will govern the acceptance of proposals.

IV. Method of Disposition

The Land Agency expects to begin acquisition of land in Project Area B early in 1953 and will have some portion of the land available for delivery during the year. The land may be sold or leased. In the event of sale, settlement must be made at the time of the delivery of the land. The Agency prefers to deliver the site in parts and will receive on delivery pro-rata partial payments of rent or sale price in accordance with the agreement to be negotiated. The actual

portion of the land to be delivered and sequence of delivery will be subject to negotiation and can be based on building-schedules and other factors. Proposals should specify whether for lease or sale and whether for all or part of the land in the Project Area. If for a part of the Project Area such part must be clearly and accurately described.

[fol. 104] V. Contents of Proposals

A. The proposal must include a list of all participants in the purchasing or leasing corporation, partnership, or individual to include at least the builder or builders, the proposed financing, and the architect or architects. The proposal should also include the name of the principal person or persons who will be responsible for dealing with the Agency in any negotiations. This list should be accompanied by statements of the experiences and background of all the participants listed, and may be supported by plans or photographs of completed construction built, financed, or planned by the participants and must indicate ability to procure construction and permanent financing on a scale comparable to the proposal submitted.

B. The purchase-price or annual payments under lease-hold must be shown in the proposal broken down, if possible, for certain sections of the area to be purchased, and indicating preferably, on a square-foot basis, the prices to be paid for land in different uses, i. e., row-houses, residential, apartment-residential, first-commercial, second-commercial, etc.

C. Proposals must also be accompanied by the following statements:

1. A general statement of intent to meet all requirements of the Redevolopment Plan referred to in paragraph 3 above.

2. A general statement which will indicate the approximate rentals or sales prices which the redeveloper expects to achieve for the different types of constructions in accordance with the plan described in paragraph III above.

D. 1. Residential.

a. Typical floor plans at scale ⅛"—1' 0". Two copies of each of the following applicable on 11" x 15" sheets—reproduction of pencil drawings, no color.

(1) Row Houses.
(2) Two Story Flats.
(3) Apartment Houses.
(4) Others.

b. Outline Specifications.

(1) Complete attached.

[fol. 105] 2. First and Second Commercial, other.

a. No typical floor plans. Show on site plan only. b. Outline specification. Indicate construction type only, with number of stories and basement proposed.

3. Site plan.

a. Show entire project, or portion for which proposal is made. Show building type and location, open space, new streets and alleys, etc.

b. Two copies on 11" x 15" sheet—reproduction of pencil drawing, no color.

VI. Evaluation of Proposals

The following are among the criteria which will guide the Board of Directors of the Land Agency in their review of the proposals:

A. The purchase price or rent proposed to be paid for the land.

B. The degree with which the proposal will produce a well-planned residential neighborhood and meet the broad objectives of the Redevelopment Program as well as the specifications and literal requirements of the Redevelopment Plan.

C. If the proposal is for a portion, rather than the whole, of the Project Area, consideration will be given to such proposal by examining the desirability of the proposal on its own merits and also as it complements

other proposals for a portion or the whole of the Project Area.

D. The rents or sales prices proposed for the new development.

E. The method by which the privately constructed "low-rent" housing requirement in the Redevelopment Plan will be met, including both the outline specifications (see paragraph 5-D) of the housing to be produced and the extent to which the estimated rent is lower than the specified rent level.

F. The experience, qualifications, ability, and interest of the principal participants involved in any proposal.

[fol. 106] VII. Acceptance of Other Proposals

The Land Agency will accept proposals subject to all general specifications which are applicable and described herein for other blighted portions of the city. The Agency reserves the right, however, to delay considerations of such proposals if the circumstances, in its opinion, dictate.

For further information, get in touch with Mr. John R. Searles, Jr., Executive Director of the D. C. Redevelopment Land Agency, at 499 Pennsylvania Avenue, N. W., Washington 1, D. C.

[fol. 107] February 26, 1953.

Memorandum

To: Persons and firms submitting proposals for redevelopment of Southwest Redevelopment Project Area B.

From: D. C. Redevelopment Land Agency.

The Board of Directors of the Redevelopment Land Agency will require that the attached letter, signed by the principal sponsor be submitted with the sponsors proposal.

[fol. 108] D. C. Redevelopment Land Agency,
499 Pennsylvania Avenue, N. W.,
Washington 1, D .C.

Date —— —, ——.

GENTLEMEN:

This letter, which is made a part of my proposal for the redevelopment of Southwest Redevelopment Project Area B, will serve to indicate my understanding that:

1. The Land Agency will be free to release the name of each sponsor submitting a proposal unless a sponsor, by written agreement with the Land Agency, does not desire such release.

2. That proposals, in their entirety, will become the property of the Redevelopment Land Agency.

—— ——.

[fol. 109] January 5, 1953.

Memorandum

To: Persons and firms submitting proposals for redevelopment of Southwest Redevelopment Project Area B.

From: D. C. Redevelopment Land Agency.

The Board of Commissioners of the District of Columbia, on December 30, 1952 approved the Redevelopment Plan for Southwest Redevelopment Project Area "B".

The prospectus prepared by the Land Agency, dated November 12, 1952 indicated that proposals from redevelopers would be considered if received no later than the thirtieth calendar day following the approval of the Redevelopment Plan by the Commissioners. The Board of Directors of the Land Agency has extended that date to the seventy-fifth calendar day following approval of the plan. Accordingly, the deadline for the submission of proposals is not set at 2:00 P. M., March 16, 1953.

[fol. 110] December 4, 1953.

Memorandum

To: Persons and firms submitting proposals for redevelopment of Southwest Redevelopment Project Area B.

From: D. C. Redevelopment Land Agency.

Some confusion has arisen for some of you with respect to the number of dwelling units which can be constructed in Project Area B. The confusion results from the Building Site Plan prepared by the National Capital Planning Commission and included in the material you received.

We wish to state categorically:

1. The allowable number of units under the plan is no less than 750 and no more than 900.

2. The Building Site Plan (Plate 5) has no official status, nor the approval of the Land Agency. It is merely a demonstration by the Planning Commission of their requirements in the Specifications. Any building site plan submitted by you will be considered for its conformance to the Specifications (see Appendix E) and not in any manner or form to the suggested Building Site Plan.

[fol. 111] District of Columbia Redevelopment Land Agency

499 Pennsylvania Ave., N. W.

Washington 4, D. C.

NAtional 6000

Mark Lansburgh, Chairman; John A. Remon, Vice Chairman; Richard R. Atkinson, James E. Colliflower, Francis F. Healy; John R. Searles, Jr., Secretary.

November 25, 1952.

Dear Sir:

The attached maps complete the material which we agreed to furnish you for your consideration in submitting proposals on the development of Project Area B.

We wish to call your attention to Plates 5 and 18 in the report which you have already received. These are illustrative only of one solution to the site planning of the area.

They are not to be considered as binding or restrictive upon any redeveloper.

Very truly yours, Malcolm A. Burrows, Assistant Executive Director.

[fol. 112] EXHIBIT K TO EXHIBIT 3

A Resolution Passed by the Board of Directors of the District of Columbia Redevelopment Land Agency at a Special Board Meeting on April 29, 1953

Be it resolved by the Board of Directors of the District of Columbia Redevelopment Land Agency, as follows:

1. That, after due consideration of all proposals and their resulting public cost in relation to the public interest, the Board of Directors hereby accepts the proposals submitted to it on March 16, 1953 for the redevelopment of Southwest Redevelopment Project Area B by

a. The Bush Construction Co.
b. Safeway Stores, Inc.
c. Martin Wiegand, Inc.
d. Eagle Transfer Co.
e. Max Greenwald.
f. Rudderforth Brothers.

2. That the proposals are accepted as submitted but subject to:

a. Further negotiation as to all or any part of said proposal;

b. Concurrence of the Housing and Home Finance Administrator that this action is in accordance with the terms of the Loan and Grant Contract (No. UR-DC-LG-1).

3. That this resolution implies intent on the part of the Board of Directors but not a commitment to negotiate to the stage of final disposition contract and that such contract will not be executed by either party until and unless.

a. A public hearing has been held thereon and,

b. Such contract has been approved by the Housing and Home Finance Administrator.

4. That any land designated for the second commercial uses in the Redevelopment Plan for Project Area B not included in the above proposals be sold or leased to yield the maximum return to the public obtainable in accordance with said Redevelopment Plan.

[fol. 113] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION TO DISSOLVE THREE-JUDGE COURT—Filed May 18, 1953

Upon consideration of defendants' motion to dissolve Three Judge Court and argument in open Court on the same, it is by the Court this 15th day of May, 1953,

Ordered, That defendants' motion be and the same hereby is denied, without prejudice.

E. Barrett Prettyman, Judge; —— ——, Judge; Edward M. Curran, Judge.

[fol. 114] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

Civil Action No. 476-'53

[Title omitted]

DEFENDANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL AFFIDAVIT OF DANIEL L. SECKINGER TO THEIR MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT—Filed May 19, 1953

Defendants move the Court for leave to file supplemental affidavit of Dr. Daniel L. Seckinger with statistical table attached thereto. The said supplemental affidavit should be

marked as defendants' Exhibit 4 to the motion to dismiss or in the alternative for summary judgment.

Let this be filed. Curran, J., 5/19/53.

Leo A. Rover, United States Attorney; Ross O'Donoghue, Assistant United States Attorney; Frank H. Strickler, Assistant United States Attorney, Attorneys for Redevelopment Land Agency and National Capital Planning Commission; Ver-
[fol. 115] non E. West, Corporation Counsel, D. C.; Oliver Gasch, Assistant Corporation Counsel, D. C.; John H. Baumgartner, Jr., Assistant Corporation Counsel, D. C., Attorneys for District of Columbia, Samuel Spencer, Renah F. Camalier, and Louis W. Prentiss.

Of Counsel: George F. Reisling, General Counsel, Redevelopment Land Agency; William S. Cheatham, General Counsel, National Capital Planning Commission.

Certificate of Service—(Omitted in Printing)

[fol. 116] Memorandum of Points and Authorities in Support of Motion for Leave to File Supplemental Affidavit—Filed May 19, 1953

Rule 60, Federal Rules of Civil Procedure.

Leo A. Rover, United States Attorney; Ross O'Donoghue, Assistant United States Attorney; Frank H. Strickler, Assistant United States Attorney, Attorneys for Redevelopment Land Agency and National Capital Planning Commission; Vernon E. West, Corporation Counsel, D. C.; Oliver Gasch, Assistant Corporation Counsel, D. C.; John H. Baumgartner, Jr., Assistant Corporation Counsel, D. C., Attorneys for District of Columbia, Samuel Spencer, Renah F. Camalier, and Louis W. Prentiss.

Of Counsel: George F. Reisling, General Counsel Redevelopment Land Agency; William S. Cheatham, General Counsel, National Capital Planning Commission.

[fol. 117] EXHIBIT 4 TO MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791-'52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al., Defendants

Civil Action No. 476-'53

MAX R. MORRIS, Plaintiff,

v.

MARK LANSBURGH, et al., Defendants

SUPPLEMENTAL AFFIDAVIT OF DANIEL L. SECKINGER

DISTRICT OF COLUMBIA, ss:

Daniel L. Seckinger, being first duly sworn on oath, deposes and says:

That reference to the table of statistics attached to his affidavit denominated Exhibit 2 in the above entitled causes discloses the inadvertent use of percentage marks where none should have been used and certain other typographical errors which have been corrected in the statistical table attached hereto.

Daniel L. Seckinger, M. D., Dr. P. H.

Subscribed and sworn to before me this 15th day of May, 1953. John Paul Foley, Notary Public, D. C. My commission expires Sept. 1, 1953.

[fol. 118] Resident Death Rates for Selected Causes for the District of Columbia for the Years 1949, 1950, and 1951

Selected death rates from data prepared by the Bureau of Vital Statistics of the D. C. Health Department show examples of health conditions in Census Tract #60, which includes Project Area B, as compared to the District of Columbia as a whole.

Death Rates From All Causes per 1,000 Population, For Census Tract #60 and the District of Columbia For the Years 1949, 1950, and 1951

Year	Census Tract #60	District of Columbia
1949	12.8	9.5
1950	17.3	10.5
1951	15.6	10.1

Death Rates From Tuberculosis per 100,000 Population, For Census Tract #60 and the District of Columbia For the Years 1949, 1950, and 1951

Year	Census Tract #60	District of Columbia
1949	118.0	52.4
1950	136.0	50.6
1951	83.7	35.5

Death Rates From Syphilis per 100,000 Population, For Census Tract #60 and the District of Columbia For the Years 1949, 1950, and 1951

Year	Census Tract #60	District of Columbia
1949	33.7	12.2
1950	10.5	9.2
1951	41.8	7.1

[fols. 119-165] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

OPPOSITION TO MOTION OF DEFENDANTS TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT AND CROSS-CLAIM FOR SUMMARY JUDGMENT—Filed May 21, 1953

Plaintiff opposes the motion of defendants to dismiss the above captioned cause or in the alternative to grant a summary judgment, and moves the Court for a summary judgment, and for reason states that there is no dispute as to any material facts and plaintiff is entitled to judgment as a matter of law.

James C. Toomey, Attorney for Plaintiff, Toomey & Mehler, 428 Barr Building, Washington 6, D. C.

CERTIFICATE OF SERVICE (omitted in printing)

[fol 166] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791–'52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, ET AL.

Civil Action No. 476-53

MAX R. MORRIS, Plaintiff,

v.

THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, ET AL.

Before PRETTYMAN, Circuit Judge, and CURRAN and KEECH, District Judges, sitting as a statutory three-judge court

OPINION—Filed November 5th, 1953

PRETTYMAN, *Circuit Judge:* These are two civil actions, consolidated, in which the constitutionality of the District

of Columbia Redevelopment Act of 1945[1] is challenged. The defendant Government bodies and officials filed motions to dismiss or, in the alternative, for summary judgment. Affidavits, with exhibits attached, were annexed to the motions. The plaintiffs filed cross-motions for summary judgment.

The plaintiffs are the owners of properties, one at 712 and the other at 716 Fourth Street, Southwest, both in the District of Columbia. One property is a department store [fol. 167] owned and operated by the plaintiff Morris, and the other property is a retail hardware store owned and operated by the plaintiff Schneider. The defendants are the members of the District of Columbia Redevelopment Land Agency, that Agency itself (a corporation), the members of the National Capital Park and Planning Commission (called in this statute the "Planning Commission"), the members of the Board of Commissioners of the District of Columbia, and the District of Columbia, a municipal corporation. The properties of the plaintiffs are located within the boundary lines of an area known in this litigation as "Project Area B".

This is the first project undertaken under the Redevelopment Act. The Planning Commission first published a Comprehensive Plan for the whole District of Columbia. Then it prepared a "Land Use Plan" for an area called the "Southwest Survey Area", which includes almost the whole of Southwest Washington. That plan, the Commission report says, "includes the Commission's proposals for the distribution of the basic land uses in the Survey Area, the population to be accommodated, the proportions of different housing types and the amount of low-rent housing which should be provided." The report recites as two of the principal proposals for the survey area:

> "1. That the area continue to house about the same number of families.
>
> "2. That the plan induce balanced and protected residential neighborhoods for all income groups, with approximately one-fourth of the housing designated for low-income families."

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[1] 60 Stat. 790, D. C. Code § 5-701 *et seq.* (1951).

The locations of other survey areas have been prepared by the Commission, one a Northwest Survey Area and one a Southeast Survey Area. Out of the Southwest Survey Area the Commission selected a part, to be known as Project Area B, for the first redevelopment project. This is what [fol. 168] is now before us.

The proposal of the Commission was approved by the Board of Commissioners of the District of Columbia. Thereafter the Planning Commission adopted a redevelopment plan for the area. The Land Agency made a detailed survey, using techniques considered standard by public authorities. A total of 1345 dwelling units in 1006 structures in the area housed a population of 5012. The survey indicated that 57.8 per cent of the dwellings depended upon outside toilets, 60.3 per cent had no "baths", 82.2 per cent no wash basins or laundry tubs, 29.3 per cent no electricity, and 83.8 per cent no central heating. The survey indicated that 64.3 per cent of the dwellings in the area were beyond repair and 18.4 per cent needed some major repairs.

After a public hearing the Commissioners approved the proposed redevelopment plan, and the Planning Commission certified it to the Land Agency for execution. Having obtained the necessary funds for preliminary steps from the Federal Housing and Home Finance Administrator, the Land Agency advertised for proposals to negotiate for the purchase or lease of land in the project area. After due consideration the Agency accepted the proposals of five bidders who owned property in the area (Safeway Stores, Inc., Martin Wiegand, Inc., Eagle Transfer Company, Max Greenwald, and Rudderforth Brothers), each to repurchase its present property, and of the Bush Construction Company for the remainder of the area.

The boundary of the project area is a line beginning at South Capitol and Eye Streets, running west to Fourth Street, north on Fourth Street, around Lots 89 and 90 in Square 541; thence further north on Fourth Street, around Lot 70 in Square 497; thence west along H Street, around Lot 43 in Square 497; thence east along G Street back to Fourth Street to the rear of lots facing on Fourth Street; [fol. 169] thence north 95.75 feet, east 3 feet, north 16 feet, east 25 feet, north 150 feet, west 25 feet, north 61.75 feet to the south line of F Street; thence east along F Street 25

feet, north 282 feet, around Lot 16 in Square 538; thence east along E Street to the property line of the P. B. and W. railroad; thence along that boundary to South Capitol Street and to the point of beginning. From this described boundary five lots owned by the trustees of the Friendship Baptist Church were eliminated.

In an affidavit the Director of Public Health for the District of Columbia characterizes Project Area B as a slum area "characterized particularly by the lack of those things which make for a good community." Attached to his affidavit are statistics of the Bureau of Vital Statistics of the District Health Department for Census Tract No. 60, within which Project Area B lies, being about one-half the residential-commercial area in the Tract. The figures for the year 1951 are:

	Census Tract No. 60	Entire District of Columbia
Death Rates Per 1000 Population	15.6	10.1
Death Rates from Tuberculosis Per 100,000 Population	83.7	35.5
Death Rates from Syphilis Per 100,000 Population	41.8	7.1

The redevelopment plan for Project Area B (a copy of which was attached as Appendix E to the affidavit of the Assistant Secretary of the Planning Commission) shows that the land use allocations designated in the plan are:

	Per Cent
Residential	31.6
First Commercial	5.1
Second Commercial	6.7
Public Uses	15.3
Expressway	18.5
Streets	22.8

The plan provides for from 750 to 900 dwelling units, of which from 40 to 50 per cent are to be row houses and two-[fol. 170] story flats and from 50 to 60 per cent are to be apartment houses. The maximum densities (that is, the number of dwelling units per net acre) are to be 25 row

houses, 40 in two-story flats, and 43.5 in apartment houses. The need for accommodations is recited in the plan to be the following for different sizes of families: 30 per cent of the accommodations for families of two, 25 per cent for families of three, 20 per cent for families of four, 20 per cent or families of five, and 5 per cent for families of six or more. Accordingly it is provided that at least 60 per cent of the total dwelling units shall have two bedrooms or more and at least 20 per cent three bedrooms or more. The plan requires that not less than one-third of the dwelling units in the area shall be low-rent units, which means that the maximum rental shall be $17.00 per room per month, excluding utilities. The plan provides for off-street parking space and enclosed play space. It provides that the instruments of lease or sale shall include a condition that the use of the land in the area shall conform to the redevelopment plan.

The full texts of the pertinent sections of the Redevelopment Act are attached as an Appendix. They can be summarized. Congress declared it to be a matter of legislative determination that, owing to technological and sociological changes, obsolete layout, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas are injurious to the public health, safety, morals and welfare. It declared that control by regulatory processes has proved inadequate and insufficient. It declared that in its judgment it is necessary to acquire property by gift, purchase, or the use of eminent domain to effectuate the discontinuance of the use for [fol. 171] human habitation of substandard dwellings and of buildings in alleys of blighted areas, and that it is necessary to modernize the planning and development of such portions of the District. Procedure under the Act is divided between two governmental agencies. The Planning Commission is directed to make a general plan for the District of Columbia which will serve as a guide of development within which various project areas may be planned. That Commission is authorized to adopt boundaries for a "project area". Such an area is defined as an appropriate unit of redevelopment planning. "Redevelopment" is defined to mean replanning, clearance, redesign and rebuilding of project areas. "Substandard housing conditions" is defined to

mean conditions obtaining in connection with the existence of housing accommodations for human beings which, because of lack of sanitary facilities, ventilation or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, are in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia. The Commission is authorized to adopt a redevelopment plan for the area, which shall contain a site and use plan, specifications of standards of population density and building intensity, and, by specification of maximum rentals or otherwise, the amount or character of any low-cost housing for which the area is to be redeveloped. A project area redevelopment plan must be approved by the Commissioners of the District of Columbia. Thereafter the plan is to be certified to the Land Agency, a body of five members created for the purposes of this statute. To further the redevelopment of blighted territory and the prevention, reduction or elimination of blighting factors or causes of blight, the Agency is authorized to acquire the land in the area by purchase, gift, or eminent [fol. 172] domain. For this purpose the Agency is authorized to bring condemnation proceedings. After the acquisition of title to the property the Agency is to transfer to the United States or the District of Columbia these pieces which are to be devoted to public uses (other than public housing), and the Agency is authorized to lease or sell the remainder of the project area to a redevelopment company or an individual or partnership, or to sell or lease parts of the area separately. While the Agency is given power to determine the terms of a lease or sale, it is required to provide that the lessee or purchaser shall carry out the approved redevelopment plan. The statute requires that, prior to approval by the District Commissioners of the redevelopment plan, they must satisfy themselves that housing is available at rents within the reach of the low-income families to be displaced from the project area. The District agencies are authorized to secure financial aid under Title 1 of the Federal Housing Act of 1949. The Redevelopment Agency is authorized to borrow money either from the Housing Administrator or from private sources as contemplated by that statute.

The critical features of the statute are: (1) It is premised upon the phrase which is the traditional definition of the police power—public health, safety, morals and welfare. (2) Congress declared the policy of the United States to be to protect the welfare of the inhabitants of the District by eliminating conditions injurious to the public health, etc. (3) Congress declared that the acquisition of real property and the leasing or sale thereof pursuant to a project area redevelopment plan is a public use. (4) The phrase "substandard housing conditions" is defined, but the phrase "blighted area" is not specifically defined. (5) For the purpose of preventing, reducing or eliminating "blighting [fol. 173] factors or causes of blight" Congress authorized the acquisition of the title to the real estate by condemnation proceedings under the power of eminent domain. (6) Congress provided for the lease or sale of the property in a project area to private persons. (7) The uses to which the property, having been sold, could be put by the purchaser were limited, in that such uses must conform to the redevelopment plan. (8) Congress required that the District Commissioners, prior to approval of any redevelopment plan, should be satisfied that adequate housing is available to the low-income families to be displaced.

The plaintiffs say that the Redevelopment Act itself is unconstitutional on two grounds, (1) that it authorizes the taking by eminent domain of the fee title to private property and the sale or lease of that title to other private persons for private uses; and (2) that the statute authorizes the taking of property in "blighted areas" without defining that term and thus fails to establish any standard sufficiently definite to sustain the delegation of power. They also say that the statute is unconstitutional in its application to the properties of the plaintiffs, which are commercial properties; that the statute should be construed strictly and, as thus construed, does not apply to commercial property or to any property upon which slum conditions do not exist. The respondent Government agencies and officials say that the Act is constitutional, that the constitutionality of statutes similar in all substantial respects to the local statute has been sustained by the highest courts of many states and by the Supreme Court of the United States; that the elimination of slum areas, injurious to the public health,

safety, morals and welfare, is a public purpose; that the condemnation of title to the property in the entire Project Area B is incidental and essential to the elimination of the [fol. 174] slum area; that, since Congress has declared the condemnation of fee title to this property, the courts are without power to disturb that declaration; that Congress has validly delegated to the administrative agencies the power to determine the boundaries of a redevelopment area project.

We can quickly dispose of the case in so far as it relates to certain parts of the property in the project area. The power to acquire by eminent domain property to be devoted to streets (including the "expressway"), schools, recreation centers, parks (including the "greenway"), and other "public uses" is established beyond question. Likewise the power to acquire by eminent domain real estate to be used for the construction of low-cost housing is established in this jurisdiction by *Keyes* v. *United States*.[2] Our problem concerns the remainder of the property in the area, which is to be acquired by eminent domain and sold or leased to private persons for private uses, with the provision that not less than one-third of the housing accommodations to be built on the property are to be for low-rent housing.

We can at once eliminate from consideration the possibility that the redevelopment plan for Project Area B is a low-rent housing project. In specifying that one-third of the dwellings be for low rent, the redevelopment plan specifically says:

> "With the well-known scarcity of low-rent housing throughout the city there will undoubtedly always be tenants for this type of property. More low-rent units would be economically feasible but it was not deemed desirable to have too high a proportion of one economic group concentrated in one area."

We also dispose at once of plaintiffs' contention that the application of the Act to commercial properties is without due process of law because not authorized by the

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[2] 73 App. D. C. 273, 119 F. 2d 444 (1941), *cert. denied*, 314 U. S. 636, 86 L. Ed. 510, 62 S. Ct. 70 (1941).

[fol. 175] Act. The Act applies alike to all properties which meet the conditions laid down in it. It[2] authorizes the acquisition by condemnation of "real property" for the purpose of the Act and defines "real property"[4] without differentiation between kinds.

At the beginning of our consideration we note some opinions of the United States Supreme Court which are cited to us and which have dealt with the boundaries of the power of eminent domain. The basic case is *Fallbrook Irrigation District* v. *Bradley*.[5] The case involved an irrigation act of the State of California, and the question was whether the construction of irrigation works is a public purpose. The California statute and the highest court of the State had declared it to be a public purpose. The Supreme Court of the United States held that, while the conclusions by the legislative and judicial branches of the state government are not conclusive and binding, the answer to the question frequently and largely depends upon the facts and circumstances surrounding the particular subject matter. It held that the people of California must be more familiar with such circumstances in that State than any stranger could be and that because of this familiarity the declarations of the people, legislature and courts of California must be treated with very great respect. The Court held if irrigation of lands were not a public purpose no general scheme of irrigation could be formed or carried into effect, because without the power to take property by condemnation it would be impossible to acquire the necessary land. The Court held that this fact, while not conclusive, was a most [fol. 176] important consideration, because otherwise millions of acres otherwise cultivable would be left in their arid and worthless condition. Taking all the facts into consideration the Court concluded that "the irrigation of really arid lands is a public purpose."[6] The Court further held that, since the question as to what land should be subjected to irrigation was one of fact, the decision of the

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[3] 60 Stat. 793 (1946), D. C. Code § 5-704 (1951).

[4] 60 Stat. 792 (1946), D. C. Code § 5-702(m) (1951).

[5] 164 U. S. 112, 41 L. Ed. 369, 17 S. Ct. 56 (1896).

[6] *Id.*, 164 U. S. at 164, 41 L. Ed. at 390.

legislature, or its delegated agent, upon that question was, in the absence of actual fraud or bad faith, conclusive.

In *Clark* v. *Nash*[7] the Court applied the doctrine of the *Fallbrook* case to an irrigation project in the State of Utah, although the project, authorized by a State statute, was the condemnation of land by an individual for the purpose of irrigating his own land. The Court was careful to caution that the decision did not approve a general rule that private property might be taken in any case to promote the public interest; the decision was based upon the particular facts of the case, involving peculiarities of the use of water in the arid and mountainous states of the West and a recognition that differences in climate and soil rendered necessary different rules in different states. *In Strickley* v. *Highland Boy Gold Min. Co.*[8] the Court applied the doctrine of *Clark* v. *Nash* to the condemnation of a right-of-way by a mining corporation for an aerial bucket line across a placer mining claim. The Court held that, in view of the conditions respecting mining in the State of Utah and the findings of the State authorities upon the necessity, it would not say that those authorities were wrong, that in such unusual cases [fol. 177] the Fourteenth Amendment did not prevent a state from requiring concessions from private individuals. In *Hairston* v. *Danville & W. Ry.*[9] the Court applied the doctrine of the three cases we have discussed to the condemnation of land for a spur railroad track and concluded that upon the facts of the case, and certain testimony in particular, the use involved was clearly public.

Joslin Co. v. *Providence*[10] dealt with the condemnation of land for the construction of a city water supply system, undoubtedly a public use. The opinion is pertinent here because the Court laid down the rule, citing a line of cases, that, public purpose having been established, the necessity of condemning property for that use is a legislative question and not a judicial question. In *Rindge Co.* v. *Los Angeles*,[11] decided the same day, the Court applied the same

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[7] 198 U. S. 361, 49 L. Ed. 1085, 25 S. Ct. 676 (1905).
[8] 200 U. S. 527, 50 L. Ed. 581, 26 S. Ct. 301 (1906).
[9] 208 U. S. 598, 52 L. Ed. 637, 28 S. Ct. 331 (1908).
[10] 262 U. S. 668, 67 L. Ed. 1167, 43 S. Ct. 684 (1923).
[11] 262 U. S. 700, 67 L. Ed. 1186, 43 S. Ct. 689 (1923).

rule, making clear, by sharply dividing the opinion, that the nature of a use, whether public or private, is ultimately a judicial question, but that the public necessity of taking particular property for that use is a legislative and not a judicial question and may be delegated by the legislature to public officials.

This brings us to *Brown* v. *United States*,[12] in which the opinion was delivered by Mr. Chief Justice Taft. The case involved the power of Congress to condemn land. The construction of a reservoir on the Snake River in Idaho resulted in the flooding of three-fourths of the town of American Falls. In order to provide a new site for the town, to [fol. 178] which the buildings were to be removed, the Government, having purchased part of the needed property, instituted condemnation proceedings to secure the needed remainder. The action was contested on the ground that it was not for a public use of the property. The Court held that under the peculiar circumstances of the case the acquisition of the new town site was so necessary to the irrigation project that the public use, which was the reservoir, covered the taking of the town site. The Court noted that its conclusion was not in conflict with the case dealt with in the *Opinion of Justices* in 204 Mass.[13] In that case the justices held that the City of Boston, building an improved street, had no power to condemn lots abutting the proposed street with a view to selling them thereafter for the erection of warehouses, etc., usable in private business. The Court said that the distinction between that case and the one before it was that the removal of the town of American Falls was a necessary step in the public improvement itself. The Court said flatly that the tract selected for the new site was "the only practical and available place to which the part of the town to be flooded could be moved so as to be united with the one-quarter of the old town which would be left."[14]

In *United States* ex rel. *T. V. A.* v. *Welch*[15] the question

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[12] 263 U. S. 78, 68 L. Ed. 171, 44 S. Ct. 92 (1923).

[13] 204 Mass. 607, 91 N. E. 405 (1910).

[14] *Supra*, 263 U. S. at 81.

[15] 327 U. S. 546, 90 L. Ed. 843, 66 S. Ct. 715 (1946).

was whether the power to condemn certain land had been conferred upon the Tennessee Valley Authority and, if so, whether the statute was constitutional. The reservoir created by the construction of a dam submerged a roadway which was the only means of ingress and egress for a [fol. 179] mountainous area upon which some 216 families lived. After various negotiations between the State of North Carolina, the county, the T. V. A., and the National Park Service, it was determined that the most economical and most feasible solution to the difficulty was for the T. V. A. to acquire by purchase or condemnation all the land in the isolated area and to transfer it to the National Park Service for inclusion within the Great Smoky Mountain National Park. The District Court and the Court of Appeals held that the T. V. A. had no power under the statute to condemn this land. The Supreme Court reversed. The Court said that it viewed the entire transaction, that is, the construction of the dam, the reservoir, and the acquisition of the property, as a single integrated effort. It held that the responsibilities placed on the T. V. A. were not only the building of dams but related to navigability, flood control, reforestation, marginal lands, and the agricultural and industrial development of the whole Tennessee Valley. The Court discussed the scope of the judicial power to determine what is a public use for the purposes of the Fourteenth Amendment and quoted from *Old Dominion Co. v. United States*,[16] saying that whatever may be the scope of that power the decision of Congress "is entitled to deference until it is shown to involve an impossibility." The Court held that the T. V. A. took the tracts for a public purpose. The cited case, *Old Dominion Co. v. United States*, involved the condemnation of land upon which the United States had built warehouses for the Quartermaster of the Army at a cost of more than $1,500,000, which the Court said "clearly were for a public use." Congress had made a specific appropriation for this land, labeling it "Sites for [fol. 180] military purposes" and "for the Quartermaster warehouses". A contention was made that the Secretary of War and his subordinates had in mind saving to the Government the cost of the buildings rather than a future

[16] 269 U. S. 55, 66, 70 L. Ed. 162, 46 S. Ct. 39 (1925).

use of the land by the Government. In that connection the Court said that the decision of Congress "is entitled to deference until it is shown to involve an impossibility."

We come, then, to the problem presented in the case at bar. It lies in three parts. 1. First, there is the slum. A slum is made up of houses (or substitutes for houses), the appurtenances thereto, and people. The houses and appurtenances are such that the people live in filth and breed disease and crime. A slum can be eliminated by tearing down the houses, destroying the appurtenances, and either building new housing on the spot for the people or moving the people away. 2. Second, there is the land upon which a slum exists. The land itself neither contributes to nor detracts from a slum. It is the same whether a slum or a model building exists upon it. The land cannot be destroyed or moved. Only its ownership and its use can be changed. If cleared, the land upon which a slum presently exists would have no harmful effects upon the public. Neither does naked ownership of land, apart from use, have any harmful public effects. A slum and the legal title to the naked land upon which it exists are separate things. 3. Third, there are sections of cities which are not at the present time used to their fullest economic possibility, or are not arranged to fit current ideas of city development. An outstanding example is Trinity Church and its surrounding cemetery at the corner of Wall Street and Broadway in New York City. Old streets are not so wide as new ones would be. Apartment houses would be more economically efficient than are single dwellings. Phrases used to describe this situation [17] are "inadequate [fol. 181] planning of the area", "excessive land coverage by buildings thereon", "defective design and arrangement of the buildings thereon", "faulty street or lot layout", "economically or socially undesirable land uses". The statutes dealing with these areas are usually called "urban redevelopment" laws. The areas are frequently called "blighted". They are in no sense slums, or similar to slums; they are out-of-date. They do not breed disease or crime;

[17] Taken from the Pennsylvania statute. Urban Redevelopment Law of May 24, 1945, P. L. 991, 35 P. S. 1701 *et seq.*

they fail to measure up to their maximum potential use in terms of economic, social, architectural, or civic desirability.

These three distinct factual situations present three distinct sets of legal questions.

I

First, we have the problem of the slum. There is no doubt concerning the power of Congress to delegate to the District Government the power to clear slums. The power lies within the well-established concepts of police power, which is the protection of the public health, safety, morals and welfare. And the Supreme Court pointed out in *District of Columbia* v. *Thompson Co.*[18] that the Congress can delegate the full of the police power to the District Government. Moreover, the clearance of a slum is a public purpose and the condemnation of improvements upon land—buildings and appurtenances—which create the hazards to health, safety, etc., is within the power of eminent domain. Since the Government can condemn such property without compensation under the police power, *a fortiori* it can condemn and pay reasonable compensation. Since there is power to condemn without compensation there is power to condemn with compensation.

[fol. 182] There have been in existence for years statutes which give the District Government condemnation power in respect to unsafe and insanitary buildings and in respect to alley dwellings.[19] If they are not sufficient to complete the advisable eliminations, Congress has ample power to correct the deficiencies.

We hold, therefore, that, so far as the District Redevelopment Act authorizes the condemnation of improvements upon land which are the creating or perpetuating causes of conditions injurious to the public health, safety, morals and welfare, as that term is used to describe breeding grounds for crime and disease, it is valid.

The problem of the slum includes not only the elimination of presently existing slums but also the prevention of fu-

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[18] 346 U. S. 100, 97 L. Ed. —, 73 S. Ct. 1007 (1953).

[19] D. C. Code §§ 103-104, 501-504, 601-607 of Title 5 (1951).

ture slums. That objective involves questions different from and more difficult than the elimination of present conditions. Prevention deals with developments which may occur in the future, not merely with conditions which exist in the present. So the problem of prevention is: What should be done with property to prevent future developments which will eventuate in slums? Regulations affecting the use of property, designed to prevent the breeding and spread of disease and crime, are within the police power and, when reasonable, are clearly valid. And it seems to us that the prevention of such conditions is a public purpose which would sustain the validity of seizure by eminent domain where the seizure is necessary for the purpose. But that conclusion poses problems. Among these problems are: Is the seizure *necessary* to the prevention of slums? Does the proposed disposition of the property after seizure reasonably serve the purpose of prevention? Perhaps the problem is more vividly phrased [fol. 183] this way: If no slum exists, either because none has ever existed at that place or because an existing slum has been cleared, may the Government seize property in order to prevent the future development of a slum? Practical questions are immediately obvious. Why is such a drastic step by the Government necessary or appropriate to prevent a future slum on a certain parcel of land? Will the proposed disposition of the property prevent slum conditions from occurring on it? The buildings, appurtenances, etc., which constitute the slum itself are usually simply destroyed. The puzzling questions relating to slum prevention, therefore, relate more directly to the title to the land than they do to the ownership of the improvements. We therefore discuss the matter in more detail in the next section of this opinion.

II

Second, we have the problem of the title to the land upon which a slum now exists. Can the Government seize title to land from which a slum has been or could be cleared, and sell it to a private person for private uses? If the land is to be devoted to schools, roads, parks and such, or to public housing, or to needed low-cost housing, it is to be devoted to a public use, and so its seizure under the power

of eminent domain is clearly authorized. But, if the sale subsequent to the seizure is to a private person for a purely private use—such, for example, as apartment houses, stores or theaters—the validity of the seizure of the title is a different problem.

The traditional definition of the power of eminent domain is in terms of public use. It contemplates the use to which the property is to be put after it has been taken. Illustrations are those we have just mentioned, the taking of prop- [fol. 184] erty for schools, streets, parks, etc. But the term "public use" has progressed as economic facts have progressed, and so projects such as railroads, public power plants, the operation of mines under some conditions, and, more recently, low-cost housing have been held to be public uses for which private property may be seized. Moreover, the traditional concept of use as the keystone of eminent domain has been enlarged in modern thought and cases. We find it described as public purpose. The variation in the term from "use" to "purpose" indicates a progression in thought. The idea is that the taking itself, as distinguished from the subsequent use of the property, may be required in the public interest. The Supreme Court has not gone far in that direction, but we think we see it indicated in the *Brown* and *T. V. A.* cases, which we have discussed. We so hold. We hold that the taking of title to real estate for the public purpose of eliminating or of preventing slums is within the power of eminent domain, even though the use to which the property is put after seizure is not a public use; provided (1) that the seizure of the title is necessary to the elimination of the slum or (2) that the proposed disposition of the title may reasonably be expected to prevent the otherwise probable development of a slum.

These extensions of the concept of eminent domain, to incompass public purpose apart from public use, are potentially dangerous to basic principles of our system of government. And it behooves the courts to be alert lest currently attractive projects intpinge upon fundamental rights. The reasoning upon the point begins with the basic concept of natural rights and of property as one of those rights. To secure those rights governments were instituted, says the Declaration, and to secure them governments may

[fol. 185] impose limitations upon them; moreover, by clear implication the Fifth Amendment authorizes the taking of private property for public use. But here is the end of government power. That the Government may do whatever it deems to be for the good of the people is not a principle of our system of government. Nor can it be, because the ultimate basic essential in our system is that individuals have inherent rights, and as to them the powers of government are sharply limited. There is no general power in government, in the American concept, to seize private property. Hence it is universally held [20] that the taking of private property of one person for the private use of another violates the due process of law clauses of the Fifth and Fourteenth Amendments. The reasoning which applies to this right is the same as that which applies to other rights guaranteed by the Constitution. Congress can suppress free speech if a clear and present danger necessitates it, but the suppression can go only as far as the necessity. In these principles lies one of the critical differences between our system of government and the totalitarian systems.

The restriction of the power of seizure to the necessities of the public use or purpose is clearly taught by the Supreme Court in *Brown* v. *United States, supra.* As we have already pointed out, the Court explicitly noted that its decision was not in conflict with the Massachusetts case [21] in which the justices held that, while the power of eminent domain permitted the seizure of property necessary to [fol. 186] widen a street, it did not permit the seizure of abutting property for the purpose of reselling it for private uses. Mr. Justice Brandeis said in *Thompson* v. *Consolidated Gas Co.*,[22] "And this Court has many times warned

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[20] A chain of study could begin with Missouri Pacific Ry. v. Nebraska *ex rel.* Board of Transportation, 164 U. S. 403, 417, 41 L. Ed. 489, 495, 17 S. Ct. 130 (1896). Many treatises have been written upon it. See, *e. g.*, Cooley, Constitutional Limitations 1124 *et seq.* (8th ed. 1927); Mott, Due Process of Law, pt. 9, c. 21 (1926); 1 Nichols, Eminent Domain § 4.7 *et seq.* (3d ed. 1950).

[21] Opinion of Justices, *supra* note 13.

[22] 300 U. S. 55, 80, 81 L. Ed. 510, 57 S. Ct. 364 (1937).

that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid."[23] We do not understand the *T. V. A.* case, *supra*, to repudiate this principle. Rather it affirmed it. The Court, after examining the facts and the statute, held the taking to be for a public purpose; it did not hold that T. V. A. might seize property beyond the public need. "When the need arises," said the Court, "individuals may be required to relinquish ownership of property * * *."[24]

The rule is laid down in *Pennsylvania Mut. Life Ins. Co.* v. *City of Philadelphia*,[25] decided by the Supreme Court of Pennsylvania and cited with approval by that court in *Belovsky* v. *Redevelopment Authority*.[26] It held invalid an act authorizing the seizure and resale of property abutting a public park merely for the purpose of protecting the parkways and "the preservation of the view, appearance, light, air, health, or usefulness thereof."

In the *Muller* case[27] the Court of Appeals of New York said:

> [fol. 187] "Whenever there arises, in the state, a condition of affairs holding a substantial menance to the public health, safety, or general welfare, it becomes the duty of the government to apply whatever power is necessary and appropriate to check it. There are differences in the nature and characteristics of the powers, though distinction between them is often fine. * * * But if the menace is serious enough to the public to warrant public action and the power applied is reasonably and fairly calculated to check it, and bears a reasonable

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[23] And see Kohl v. United States, 91 U. S. 367, 23 L. Ed. 449 (1876); Cincinnati v. Vester, 281 U. S. 439, 74 L. Ed. 950, 50 S. Ct. 360 (1930); Salisbury Land & Improvement Co. v. Commonwealth, 215 Mass. 371, 102 N. E. 619 (1913).

[24] *Supra*, 327 U. S. at 554-555.

[25] 242 Pa. 47, 88 Atl. 904 (1913).

[26] 357 Pa. 329, 54 A. 2d 277 (1947).

[27] New York City Housing Authority v. Muller, 270 N. Y. 333, 1 N. E. 2d 153, 155 (1936).

relation to the evil, it seems to be constitutionally immaterial whether one or another of the sovereign powers is applied."

We are of opinion that title to real estate cannot be seized by the Government merely because a slum presently exists upon the land. Some further necessitous circumstance must exist to validate such a seizure. It must be either that the clearance of the slum is impracticable without taking the title to the land or that proposed restrictions which can be imposed only through the medium of a resale are fairly calculated to prevent recurrence of slum conditions. Ordinarily the seizure of the fee title to land would seem to be neither necessary nor reasonably incidental to the clearance of a slum. But we readily see that there could be circumstances—such, for example, as an obdurate landlord or an impoverished homeowner— in which the seizure of the title, with compensation therefor, ought in reason accompany the condemnation of the buildings. Valid seizure for prevention purposes frequently occurs when the changing of a neighborhood from residential to manufacturing, maritime, or major commercial leaves a remnant of housing accommodations which nurture slum conditions and which ought to be removed to permit other uses.[28]

Whether the taking of a certain piece of property is necessary for a certain public use or purpose is initially and almost wholly a legislative question. But like every other legislative determination it is subject to the Constitution. Congress itself could not deprive a person of his [fol. 188] property without due process of law. It is the duty of the courts, when a legislative act is challenged as violative of the Constitution, to determine that issue. Indeed it is for that specific purpose that this three-judge court is assembled by direct and specific authorization of Congress. Judicial consideration of the validity of a legislative decision that a particular property be seized for a public purpose is not farther removed from judicial inquiry than is the validity of a statute. As Mr. Justice Bur-

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[28] See, *e. g.*, Burt v. Pittsburgh, Schenck v. City of Pittsburgh, and Foeller v. Housing Authority of Portland, *infra*.

ton pointed out in *United States* v. *Carmack*,[29] the Fifth Amendment provides an owner "with important protection against abuse of the power of eminent domain".

Just as the seizure of property by the Government is a legislative rather than a judicial question, it is also a legislative rather than an executive question. The Supreme Court made amply clear in *Youngstown Co.* v. *Sawyer*[30] that, unless there is an act of Congress which expressly authorizes seizure or from which authority to seize can fairly be implied, there is no executive power of seizure. That rule must guide us here.

In the case before us Congress made no declaration concerning the specific property involved. Its declaration concerned "conditions existing in the District of Columbia with respect to substandard housing and blighted areas". Obviously that declaration did not concern all conditions everywhere in the District. It meant certain conditions in certain places. Congress declared as a matter of legislative determination that the conditions to which it referred "are injurious to the public health, safety, morals, and welfare". Here, then, in that quoted expression is the description of [fol. 189] the conditions to which the statute is directed. Then Congress declared that to effectuate its policy of "eliminating all such injurious conditions" and "to eliminate the sustandard housing conditions and the communities in the inhabited alleys and blighted areas" acquisition of property by eminent domain is necessary. When it conferred the power of eminent domain upon the Agency it did so subject to the "conditions" of the Act and "for that purpose", *i. e.*, for the redevelopment of "blighted territory" and the prevention and elimination of "blighting factors or causes of blight".

With those limitations Congress delegated to executive officials the authority to determine what properties should be seized. Of course it could do so, provided the required tests, established long ago, are met. The tests are: The purpose for which the property is to be seized must be a public purpose; the seizure must be for the declared purpose; and the act of delegation must be sufficiently explicit to enable

[29] 329 U. S. 230, 236-237, 91 L. Ed. 209, 67 S. Ct. 252 (1946).
[30] 343 U. S. 579, 96 L. Ed. 1153, 72 S. Ct. 863 (1952).

the administrators to act with administrative power and not impinge upon legislative power, and also to enable a court to determine whether the administrators are within the congressional grant.

With these principles in mind we hold that the seizure of title to real estate upon which slums exist or upon which a slum may be foreseen would be valid under the Constitution only to the extent that the taking is reasonably necessary to the accomplishment of the asserted public purpose. We hold that the Redevelopment Act goes no further than that, that it confers upon the administrative officials power to seize property, under the limitations we have described, only for the purpose of eliminating or preventing conditions injurious to the public health, safety, morals or welfare. Thus construed, we hold the statute to be valid. We hold [fol. 190] that the necessity for the seizure of the title to a parcel of real estate involves facts and judgment, that these are essentially for the administrators, and that the function of the courts is limited to determining whether the conclusions of the administrators are within reason upon the record and within the congressional delegation of authority.

III

Third, we have the problem of the area which is not a slum but which is out-of-date, called by the Government "blighted" or "deteriorated". The Government says the statute is not limited to slum clearance but extends to what is called "urban redevelopment"; and that as thus construed the statute is valid. The word in the statute upon which the Government rests its view is "blighted", which is not defined in the statute. A hint of a meaning such as that urged by the Government is found in the phrase "backward and stagnant and therefore blighted", which appears near the end of Section 3(n) of the Act. But we have already indicated our conclusion that the more direct provisions of the statute control its scope, that it is the clearly expressed intent of the Congress to authorize in this statute the seizure of property only for the purpose of eliminating and preventing thereafter conditions injurious to the public health, safety, morals and welfare. If we did not find this meaning clear upon the face of the statute,

we would be impelled to construe it with that meaning, because otherwise the statute would be unconstitutional.

The contention as to "blight" and "urban redevelopment" would cover two possible factual situations: one where the plan is to redevelop an area in which no slums exist, and the other where the plan is to redevelop an area which the Government deems "appropriate" for redevelop-
[fol. 191] ment but upon only a part of which slums exist. We first discuss the two possibilities separately.

The hypothesis in the first phase of this consideration is an urban area which does not breed disease or crime, is not a slum. Its fault is that it fails to meet what are called modern standards. Let us suppose that it is backward, stagnant, not properly laid out, economically Eighteenth Century—anything except detrimental to health, safety or morals. Suppose its owners and occupants like it that way. Suppose they are old-fashioned, prefer single-family dwellings, like small flower gardens, believe that a plot of ground is the place to rear children, prefer fresh to conditioned air, sun to fluorescent light. In many circles all such views are considered "backward and stagnant". Are those who hold them "therefore blighted"? Can they not, nevertheless, own property? Choice of antiques is a right of property. Or suppose these people own these homes and can afford none more modern. The poor are entitled to own what they can afford. The slow, the old, the small in ambition, the devotee of the outmoded have no less right to property than have the quick, the young, the aggressive, and the modernistic or futuristic.

Is a modern apartment house a better breeder of men than is the detached or row house? Is the local corner grocer a less desirable community asset than the absentee stockholder in the national chain or the wage-paid manager? Are such questions as these to be decided by the Government? And, if the decisions be adverse to the erstwhile owners and occupants, is their entire right to own the property thereby destroyed? Even if the line between regulation and seizure, between the power to regulate and the power to seize, is not always etched deeply, it is there. And, even if we progress in our concepts of the "general
[fol. 192] welfare", we are not at liberty to obliterate the boundary of governmental power fixed by the Constitution.

The terms "public use" and "public purpose" have never been defined with precision, and cannot be. Localities, customs and times change, and with them the needs of the public may change. But even the most liberal courts have put boundaries upon the meanings. One eminent authority [31] sums up the matter by saying that the courts which go furthest in sustaining the power of eminent domain hold that "anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor" constitutes a public use. We think so unqualified a definition cannot be sustained, because every factory or mercantile house of any size meets that definition to some degree, and most certainly the Government has not an unrestricted power to seize one man's property and sell it to another for the building of a factory or a store. The decisions of the courts which used such sweeping language and which are cited to us fall far short of supporting the contention made to us in the present case. We shall discuss them in a moment.

It is said that the established meaning of eminent domain includes measures for the "general welfare" and that new social doctrines have so enlarged the concept of public welfare as to include all measures designed for the public benefit. The difficulty lies somewhat in the unqualified philosophical declaration, but it lies more in the practicality that some person or persons must determine, if that be the rule, what is the public benefit. Therein lies the insuperable obstacle, in the American view. There [fol. 193] is no more subtle means of transforming the basic concepts of our government, of shifting from the preeminence of individual rights to the preeminence of government wishes, than is afforded by redefinition of "general welfare", as that term is used to define the Government's power of seizure. If it were to be determined that it includes whatever a commission, authorized by the Congress and appointed by the President, determines to be in the interest of "sound development", without definition

[31] 2 Nichols, Eminent Domain § 7.2 *et seq.* (3d ed. 1950).

of "sound development", the ascendancy of government over the individual right to property will be complete. Such ascendancy would logically follow over the rights of free speech and press, it seems to us.

We are of opinion that the Congress, in legislating for the District of Columbia, has no power to authorize the seizure by eminent domain of property for the sole purpose of redeveloping the area according to its, or its agents', judgment of what a well-developed, well-balanced neighborhood would be; lest this sentence be misconstrued out of context, we repeat our hypothetical assumption for the purposes of this first phase of Section III of our opinion that no slum exists on the hypothetical property or in the area and that the seizure is not for a public use.

But the Government rests the present case upon a narrower basis. And this brings us to the second phase of the problem posed in this section of the opinion. This concerns a situation where the plan is to redevelop an area upon only a part of which slums exist. The state cases hold, the Government says, that "where from a comprehensive standpoint there is a *public benefit*, such as slum clearance, flowing from the project, the taking is for a public use regardless of the ultimate disposition of the particular piece of property." The Government says that it has determined that Project Area B in the case at bar is an appropriate area [fol. 194] for "redevelopment", that slums exist in that area, and that therefore it may seize the title to all the land in the area and, having replanned it, sell it to private persons for the building of row houses, apartment houses, commercial establishments, etc. In essence the claim is that if slums exist the Government may seize, redevelop and sell all the property in any area it may select as appropriate, so long as the area includes the slum area. This amounts to a claim on the part of the authorities for unreviewable power to seize and sell whole sections of the city.

We think, as we have indicated, that the Redevelopment Act does not contain so broad an authorization. But, if it did so, it would be invalid from two viewpoints. In the first place, a public purpose must be the reason for the seizure of private property, not merely the excuse for the seizure. There must be a necessity for the taking in order to accomplish the public purpose. The rule governing the seizure

of property geographically unnecessary to slum clearance is the same as that governing the unnecessary seizure of title to land upon which a slum exists, which rule we have already discussed. In the second place, the Redevelopment Act does not contain standards sufficiently definite to sustain the validity of an authorization as broad as that claimed. "Blight" is not defined in the statute. No standard other than "substandard housing" is defined. We are not told where we may ascertain what a proper land coverage would be, or a building arrangement without defect, or a street layout without fault, or what is desirable economic use or even socially desirable use of land, or what is "backward" or "stagnant", or what is "sound development". These criteria for seizure would be formulated on a case-by-case basis.

[fol. 195] The inadequacy of the statutory prescriptions is demonstrated by the proposed boundary lines of Project Area B. We have in the statute no measuring means by which to tell why one property on Fourth Street is to be seized, or can be seized validly, while another property on the same side of the same block, or across the street, or in the next block is not included in the area to be condemned. Congress cannot confer undescribed authority to regulate a business; *a fortiori* it cannot confer undefined power to seize in full ownership businesses and properties.

The Government cites the recent redevelopment cases in the state and federal courts. The state cases are far too numerous to discuss in detail, but study shows that they deal with low-cost housing projects, with solutions for acute conditions affecting some major feature of the life of the city, or with slum clearance alone. The *Foeller* case[32] is an example of an exhaustive study, with many citations of authority. It involved an area in the waterfront district of Portland, Oregon, where dwellings remained scattered among the commercial and industrial establishments as those establishments increased in number and the residential areas retreated from them. This inevitably created slums. Moreover, if the old houses were removed and new ones built in the same locations, slum conditions would al-

[32] Foeller v. Housing Authority of Portland, 256 P. 2d 752 (Ore. 1953).

most certainly return. Housing accommodations in the midst of the smoke, fumes, noise, and fire hazards of maritime and industrial activity naturally and usually retrogress to slums. At the same time, commercial, industrial and maritime activity is the lifeblood of Portland. The redevelopment plan was to take over the titles to these dwellings and the small neighborhood business properties and to resell them with provisions, inserted in the title instruments [fol. 196] to run with the land, that the property be used thereafter for commercial and industrial purposes only. Here was a vigorous, somewhat drastic attack upon an acute public problem. The seizure and resale of the properties, grouped to permit use for other than dwellings, was a clear method of serving two purposes, (1) to prevent the recreation of slums and (2) to enlarge the potential activity upon which the city lived. The Supreme Court of Oregon, in an exhaustive opinion, stressing and emphasizing the features of the factual situation, upheld the statute.

The same sort of condition existed in the *Schenck* case.[33] The project area was the heart of the downtown commercial area of Pittsburgh. The growth of the city from a small town on the triangle between the two rivers left village streets to serve the needs of a great commercial metropolis, and dwellings remained in the district. Inevitably slums arose in those dwelling conditions. The proposed redevelopment plan was to take those properties, build a great park, replat the streets, and erect three 18-story office buildings. Here again were two purposes, the conclusive prevention of a return of slums to this area and the enlargement of the activity upon which the economic life of the public depended. The Supreme Court of Pennsylvania upheld the plan, and the federal courts did likewise.

In *Zurn* v. *City of Chicago*[34] a different problem was presented. The statute there involved, the Supreme Court of Illinois said, "is purely an act for slum clearance and rehabilitation of slum and blight areas", and again it said,

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[33] Schenck v. City of Pittsburgh, 364 Pa. 31, 70 A. 2d 612 (1950).

[34] 389 Ill. 114, 59 N. E. 2d 18 (1945).

[fol. 197] "The sole basis for the public use is slum clearance and the rehabilitation of slum and blight areas." The court noted that "Slum and blight areas are defined in section 3 as those urban districts in which a major portion of the housing is detrimental to the health, safety, morality or welfare of the occupants by reason of age, dilapidation, overcrowding, faulty arrangement, lack of ventilation, light or sanitation facilities, or any combination of these factors."[35] Within this purpose of slum clearance the court upheld the power of eminent domain.

It is said that the Supreme Court in *Burt* v. *Pittsburgh*[36] sustained the view which the Government takes upon this phase of the matter before us. But we do not find that conclusion in that case. That controversy concerned the same problem, the same area in downtown Pittsburgh, that was considered in *Schenck, supra*. It was presented to a three-judge federal court, and that court, in a two-paragraph opinion,[37] recited (1) that the validity of the statute[38] under the constitution of the State of Pennsylvania had been upheld by the Supreme Court of Pennsylvania in two cases, citing Schenck and the *Belovsky* case,[39] and (2) that there was nothing in the complaint or in the exhibits attached thereto which indicated that the statutes themselves or the action of the constituted authorities in carrying them out violated the plaintiff's rights under the federal Constitution. Thereupon the court dismissed the complaint. The Supreme Court affirmed upon motion, without opinion, cit-
[fol. 198] ing *United States* ex rel. *T. V. A.* v. *Welch, supra*. In the latter case the Court had pointed out that it had never held invalid a state statute authorizing the taking of private property for public uses which the supreme court of the state had upheld. It must be this section of the *T. V. A.* opinion which the Court had in mind in citing the case in the *Burt* case, since the remainder of that opin-

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[35] *Id.*, 59 N. E. 2d at 23.

[36] 340 U. S. 802 (1950).

[37] Burt v. Pittsburgh, Civil No. 8706, W. D. Pa., April 25, 1950.

[38] Urban Redevelopment Law, *supra* note 17.

[39] Belovsky v. Redevelopment Authority, 357 Pa. 329, 54 A. 2d 277 (1947).

ion dealt with the constitutional powers of a federal agency under a federal statute.

In the *Belovsky* case, cited by the three-judge court in *Burt*, the Supreme Court of Pennsylvania held that the fundamental purpose of the Housing Authorities Act, which it had upheld as a slum clearance act,[40] and the Urban Redevelopment Law "was the same, namely, the clearance of slum areas",[41] and that in the Urban Redevelopment Law there was "only the one major purpose of the elimination and rehabilitation of the blighted sections".[42] The court pointed out that "the law actually requires that property be taken by eminent domain only to the extent reasonably required for the purpose for which the power is exercised".[43]

Thus the utmost held by the recent redevelopment cases is that meeting a compelling community economic need is a public purpose. That is the doctrine of the early Supreme Court cases, such as *Fallbrook*, *Clark* v. *Nash*, and others, *supra*. We do not depart from the thesis of those decisions.

In *People of Puerto Rico* v. *Eastern Sugar Associates*[44] the Court of Appeals for the First Circuit considered a [fol. 199] statute of the insular legislature which embodied a far-reaching program of agrarian reform designed to remedy desperate economic conditions existing in the Islands. The act authorized the seizure of large holdings of land used for the raising of sugar, especially that owned by corporations, and the redistribution of the land to individuals in small parcels. The court based the validity of the statute upon the public necessity for solution of the general and acute conditions and upon its conclusion that the statute was "reasonably calculated to deal with these problems." The essence of the opinion conforms to the other decisions we have discussed.

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[40] Dornan v. Philadelphia Housing Authority, 331 Pa. 209, 200 Atl. 834 (1938).

[41] *Supra*, 54 A. 2d at 281.

[42] *Id.* at 282.

[43] *Id.* at 283.

[44] 156 F. 2d 316 (1946), *cert. denied*, 329 U. S. 772, 91 L. Ed. 664, 67 S. Ct. 190 (1946).

The Government cites cases dealing with such problems as the selection of post-office sites,[45] and the authority of administrative officials to make such selections. They are not pertinent here. The United States has undoubted power to establish post offices, and the use is a public use. The site merely involves a comparative judgment. The question before us concerns power.

Legal support for the Government's position is sought in the authorities upholding the validity of zoning. But we know of no zoning law which provides that, if one's property, now to be in a residential zone, has been used in the past for commercial purposes, its ownership is forfeit. Moreover the power to zone is sharply restricted. The Supreme Court said in *Nectow* v. *Cambridge*,[46] cited in *Devereux Foundation* v. *Lea:*[47]

> "The governmental power to interfere by zoning regulations with the general rights of the land owner by restricting the character of his use, is not unlimited, and other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the [fol. 200] public health, safety, morals, or general welfare. *Euclid* v. *Ambler Co., supra* [272 U. S.], p. 395."

And in *Seattle Trust Co.* v. *Roberge*[48] the Court said: "Zoning measures must find their justification in the police power exerted in the interest of the public."

This brings us to consider the redevelopment plan before us. It covers about fifteen square city blocks. It lies within a Census Tract in which slum conditions are said to exist, and it contains properties upon which slum conditions are said to exist. Its western boundary is an irregular line which runs around lots, encompasses some establishments along a street and excludes others on the same side of the same street, moves from east to west as it runs north. It excludes certain properties, and under it certain other properties would be sold back to the present owners

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[45] *E. g.*, United States v. Carmack, *supra*.

[46] 277 U. S. 182, 188, 72 L. Ed. 842, 48 S. Ct. 447 (1928).

[47] 326 U. S. 686, 90 L. Ed. 403, 66 S. Ct. 89 (1945).

[48] 278 U. S. 116, 120-121, 73 L. Ed. 210, 49 S. Ct. 50 (1928).

or be retained by them. The key to the plan, apart from slum clearance, is the opinion of the Government authorities that residential neighborhoods should be "well-balanced" and that the area should contain housing for all income groups. The plan points out that "redevelopment" will inevitably raise the average income level and make it possible to introduce housing for higher-income families at a later stage in the program. It says that generally the Southwest area "should be predominantly a moderate to lower-income area". The recommendations as to the percentages of the types of accommodations to be built in the area are said to be "based upon a conservative analysis of the present local real estate market." The plan says: "The purpose of redevelopment is to clear the slums and replace them with that pattern of land use most appropriate to the overall development of the community."

[fol. 201] No acute housing shortage is to be met. In fact the plan provides for no more residents than presently occupy the area. No pressing economic condition, apart from the slums, is sought to be dealt with by this plan. No purpose of housing for the needy—low-rent housing—is the motivation. No rearrangement of streets is contemplated or provided. The streets throughout Project Area B are exactly the same as are the streets in all parts of the District of Columbia, lettered streets running east and west and numbered streets running north and south, in continuous lines across the entire District. The plan provides that certain streets shall be widened somewhat and that an expressway and a greenway shall be built. The only restrictions to future use are the requirements as to the type of houses to be built (row, apartment, etc.) and as to the percentage of rentals for the low-income group.

In sum the purpose of the plan, in addition to the elimination of slum conditions, is to create a pleasant neighborhood, in which people in well-balanced proportions as to income may live. The Government is to determine what conditions are pleasant, what constitutes the "most appropriate" pattern of land use, what is a good balance of income groups for a neighborhood, how many poor people, how many moderately well-to-do people, how many families of two, how many of four, etc., should be provided for in

this neighborhood, and what the proper development of a community should be.

Of course the plan as pictured in the prospectus is attractive. In all probability it would enhance the beauty and the livability of the area. If undertaken by private persons the project would be most laudable. It would be difficult to think of a village, town or city in the United States which [fol. 202] a group of artists, architects and builders could not improve vastly if they could tear down the whole community and rebuild the whole of it. But as yet the courts have not come to call such pleasant accomplishments a public purpose which validates Government seizure of private property. The claim of Government power for such purposes runs squarely into the right of the individual to own property and to use it as he pleases. Absent impingement upon rights of others, and absent public use or compelling public necessity for the property, the individual's right is superior to all rights of the Government and is impregnable to the efforts of government to seize it. That the individual is in a low-income group or in a high-income group or falls in the middle of the groups is wholly immaterial. One man's land cannot be seized by the Government and sold to another man merely in order that the puchaser may build upon it a better house or a house which better meets the Government's idea of what is appropriate or well-designed.

We hold that Congress did not in the Redevelopment Act confer power to seize property beyond the reasonable necessities of slum clearance and prevention, the word "slum" meaning conditions injurious to the public health, safety, morals and welfare.

If property is seized for the purpose of eliminating or preventing slums within the limitations and in accordance with the rules we have described, the fact that it may be sold subsequently to private persons does not vitiate the validity of the seizure.

The complaints in the two actions at bar are pitched entirely upon a challenge of the constitutionality of the Redevelopment Act, and, except the issue as to commercial property, no other issue as to the application of the statute [fol. 203] to the property of plaintiffs is raised by the

pleadings. Therefore, since the statute, as we construe it, is constitutional, we must grant the motion to dismiss.

In the argument by plaintiffs' counsel in support of their motions for summary judgment, reference was made to arbitrary and capricious action by the Planning Commission in fixing the boundary lines of the Southwest Redevelopment Project Area "B" to include the plaintiffs' commercial properties, while excluding other commercial properties on the same street. This issue, however, is not raised by the pleadings. Should the pleadings be amended to include an issue as to whether or not the administrative agency has acted beyond the scope of the statute, as construed in this opinion, in including the plaintiffs' properties within the project area, the case should be heard by one judge for determination of that question.

E. Barrett Prettyman, Richmond B. Keech, Edward M. Curran.

Dated November 5, 1953.

[fol. 204] APPENDIX

60 STAT. 790 (1946), D. C. CODE § 5-701 (1951):

"It is hereby declared to be a matter of legislative determination that owing to technological and sociological changes, obsolete lay-out, and other factors, conditions existing in the District of Columbia with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare, and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain to effectuate the declared policy by the discontinuance of the use for human

habitation in the District of Columbia of substandard dwellings and of buildings in alleys and blighted areas, and thereby to eliminate the substandard housing conditions and the communities in the inhabited alleys and blighted areas in said District; and it is necessary to modernize the planning and development of such portions of such District. The Congress finds that the foregoing cannot be accomplished by the ordinary operations of private enterprise alone without public participation in the planning and in the financing of land assembly for such development; and that for the economic soundness of this redevelopment and the accomplishment of the necessary social and economic benefits, and by reason of the close relationships between the development and uses of any part of an urban area with the development and uses of all other parts the sound replanning and redevelopment of an obsolescent or obsolescing portion of such District cannot be accomplished unless it be done in the light of comprehensive and coordinated planning of the whole of the territory of the District of Columbia and its environs; and that this comprehensive planning and replanning should proceed vigorously without delay; and to these ends it is necessary to enact the provisions hereinafter set forth; and that the acquisition and the assembly of real property and the leasing or sale thereof for redevelopment pursuant to a project area redevelopment plan, all as provided in sections 5-701 to 5-719, is hereby declared to be a public use."

60 STAT. 791 (1946), D. C. CODE § 5-702 (1951):

"The following terms, whenever used or referred to in sections 5-701 to 5-719, shall, for the purposes of sections 5-701 to 5-719 and unless a different intent clearly appears from the context, be construed as follows:

"• • •

"(f) 'Low-rent housing' means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be [fol. 205] used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

"* * *

"(b) 'Planning Commission' means the National Capital Park and Planning Commission.

"* * *

"(j) 'Project area' is an area of such extent and location as may be adopted by the Planning Commission and approved by the District Commissioners after public hearing as an appropriate unit of redevelopment planning for a redevelopment project separate from the redevelopment projects for other parts of the District of Columbia. In the provisions of this Act relating to lease or sale by the Agency, for abbreviation 'project area' is used for the remainder of the project area after taking out those pieces of property which in accordance with section 7-706(a) shall have been or are to be transferred for public uses.

"* * *

"(n) 'Redevelopment' means replanning, clearance, redesign, and rebuilding of project areas, including open-space types of uses, such as streets, recreation and other public grounds, and spaces around buildings, as well as buildings, structures, and improvements, but not excluding the continuance of some of the existing buildings or uses in a project area. For the purposes of sections 5-701 to 5-719, 'redevelopment' also includes the replanning, redesign, and original development of undeveloped areas which, by reason of street lay-out, lot lay-out, or other causes, are backward and stagnant and therefore blighted and for which replanning and land assembly are deemed necessary as a condition of sound development.

"* * *

"(r) 'Substandard housing conditions' means the conditions obtaining in connection with the existence of any dwelling, or dwellings, or housing accommodations for human beings, which because of lack of sanitary facilities, ventilation, or light, or because of dilapidation, overcrowding, faulty interior arrangement, or any combination of these factors, is in the opinion of the Commissioners detrimental to the safety, health, morals, or welfare of the inhabitants of the District of Columbia."

60 STAT. 793 (1946), D. C. CODE § 5-703 (1951):

"(a) The District of Columbia Redevelopment Land Agency is hereby established and shall be composed of five members. * * *"

60 STAT. 793 (1946), D. C. CODE § 5-704 (1951):

"(a) Subject to and in accordance with the procedures, conditions, and other provisions of sections 5-701 to 5-719, [fol. 206] the Agency is hereby granted the power to further the redevelopment of blighted territory in the District of Columbia and the prevention, reduction, or elimination of blighting factors or causes of blight and for that purpose to acquire and assemble real property by purchase, exchange, gift, dedication, or eminent domain, and including the power to rent, maintain, manage, operate, repair, clear, transfer, lease, and sell such real property, but excluding the power to build new structures thereon (other than the improvements mentioned in section 5-706(i) or the power to enlarge, extend, or make major structural improvements of existing buildings).

"(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of sections 16-619 to 16-644. The title to properties acquired under sections 5-701 to 5-719 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency."

60 STAT. 794 (1946), D. C. CODE § 5-705 (1951).

"(a) The Planning Commission is hereby directed to make and, from time to time, develop a comprehensive or general plan of the District of Columbia, including the appropriate maps, charts, tables, and descriptive, interpretative, and analytical matter, which plan is intended to serve as a general framework or guide of development within which the various project areas may be more precisely planned and calculated, and which comprehensive or general plan shall include at least a land-use plan which designates the proposed general distribution and general locations and extents of the uses of the land for housing, busi-

ness, industry, recreation, education, public buildings, public reservations, and other general categories of public and private uses of the land.

"(b) For the exercise of the powers granted to the Agency by sections 5-701 to 5-719 for the acquisition and disposition of real property for the redevelopment of a project area, the following steps and plans shall be requisite, namely:

"(1) Adoption by the Planning Commission of the boundaries of the project area proposed by it, submission of such boundaries to the District Commissioners, and approval thereof by said Commissioners.

"(2) Adoption by the Planning Commission and submission to, and, after a public hearing thereon, approval by the District Commissioners, of the redevelopment plan of the project area which shall contain a site and use plan for the redevelopment of the area, including the approximate locations and extents of the land uses proposed for and within the area, such as public buildings, streets, and other public works and utilities, housing, recreation, business, industry, schools, public and private open spaces, and other categories of public and private uses. Such plan shall also contain specifications of standards of population density and building intensity. Any such plan may also specify, by means of specification of maximum rentals or other basis, the amount or character or class of any low-rent housing for which the area or part thereof is proposed to be redeveloped.

[fol. 207] "• • •

"(d) After a project area redevelopment plan shall have been adopted by the Planning Commission and approved by the District Commissioners, the Planning Commission shall forthwith certify said plan to the Agency, whereupon said Agency shall proceed to the exercise of the powers granted to it in sections 5-701 to 4-719 for the acquisition and assembly of the real property of the area. • • •"

60 STAT. 795 (1946), D. C. CODE § 5-706 (1951):

"(a) After the real property in the project area shall have been assembled by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. • • •

"(b) The Agency shall have the power to lease or sell the remainder of the project area as an entirety to a redevelopment company or to an individual or a partnership. • • •

"(c) Any such lease or sale may be made without public bidding but only after a public hearing, after ten days' public notice, by the Agency upon the proposed lease or sale and the provisions thereof.

"(d) The term of any such lease shall be fixed by the Agency and the instrument of lease may provide for renewals upon reappraisals and with rentals and other provisions adjusted to such reappraisals. Every such lease or sale shall provide that the lessee or purchaser shall carry out or cause to be carried out the approved project area redevelopment plan or approved modifications thereof and that no use shall be made of any land or real property included in the lease or sale nor any building or structure erected thereon which does not conform to such approved plan or approved modifications thereof. • • •

"(e) Until the Agency certifies that all building constructions and other physical improvements specified to be done and made by the purchaser of the area have been completed, the purchaser shall have no power to convey the area, or any part thereof, without the consent of the Agency; • • •.

"(f) In lieu of the lease or sale of a project area as an

entirety, the Agency shall have the power to lease or sell parts of such area separately to individuals, partnerships, or redevelopment companies. * * *

"* * *

[fol. 208] "(h) The Agency may itself demolish any existing structure or clear the area or any part thereof, or may specify the demolition and clearance to be performed by a lessee or purchaser within a reasonable time after such lease or purchase. The Agency may specify a reasonable time schedule and reasonable conditions for the construction of buildings and other improvements by a lessee or purchaser: * * *."

60 STAT. 797 (1946), D. C. CODE § 5-707 (1951):

"(a) Prior to approval by the District Commissioners, pursuant to subparagraph (2) of section 5-705(b), of any redevelopment plan, the District Commissioners shall satisfy themselves (and shall so state at the public hearing required by such subparagraph) that decent, safe, and sanitary housing, substantially equal in quantity to the number of substandard dwelling units to be removed or demolished within the project area, under the proposed redevelopment plan, are available or will be provided (by construction pursuant to the redevelopment plan, or otherwise) in localities, and at rents or prices, within the reach of the low-income families displaced or to be displaced (temporarily or permanently), pursuant to the redevelopment plan, from the project area."

63 STAT. 441 (1949), D. C. CODE § 5-717a (1951):

"* * *

"(g) It is the purpose and intent of this section to authorize the District Commissioners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949. * * *"

[fol. 209] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5791-52

GOLDIE SCHNEIDER, Plaintiff,

v.

DISTRICT OF COLUMBIA, et al., Defendants

Civil Action No. 476-53

MAX R. MORRIS, Plaintiff,

v.

THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, et al., Defendants

ORDER GRANTING MOTION TO DISMISS—Filed November 20, 1953

In accordance with the opinion of this Court, dated November 5, 1953, it is hereby

Ordered, Adjudged and Decreed that the constitutionality of the District of Columbia Redevelopment Act of 1945, 60 Stat. 790, D. C. Code § 5-701 et seq. (1951), be and the same is hereby sustained, and it is further

Ordered that the motion to dismiss the complaints filed on behalf of the defendants be and the same is hereby granted, with leave however to file amended complaints within 10 days from the date of this order.

Date: November 20, 1953.

E. Barrett Prettyman, Circuit Judge, United States Court of Appeals. Richmond B. Keech, Judge, United States District Court. Edward M. Curran, Judge, United States District Court.

[fols. 210-214] Certificate of service (omitted in printing).

[fol. 215] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed December 21, 1953

Max R. Morris, plaintiff in the above-entitled cause, feeling himself aggrieved by the order of the Court dismissing his complaint, entered herein on the 20th day of November, 1953, for the reasons set forth in his assignment of errors which is filed herewith, hereby prays an appeal from such order to the Supreme Court of the United States, and further prays that a transcript of the record on appeal be certified and sent to the Supreme Court of the United States.

James C. Toomey, 910 - 17th Street, N.W., Washington 6, D. C.; Joseph H. Schneider, 602 - 7th Street, S.W., Washington, D. C. Albert Ginsberg, 602 - 7th Street, S.W., Washington, D. C., Attorneys for Plaintiff.

[fols. 216-218] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 21, 1953

It appearing to the Court that the plaintiff, Max R. Morris, has filed his petition for appeal to the Supreme Court of the United States, and filed therewith his assignment of errors, and also his statement as to the jurisdiction of the Supreme Court of the United States, as required by Rule 12 of the Supreme Court Rules, duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the order granting defendant's motion to dismiss the complaint for temporary and permanent injunction, mandatory injunction, and declara-

tory judgment, entered herein on November 20, 1953, it is by the Court this 21st day of December, 1953,

Ordered that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the order granting defendant's motion to dismiss the complaint for temporary and permanent injunction, mandatory injunction and declaratory judgment, rendered in this cause on the 20th day of November, 1953, and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court, said appeal being hereby made returnable forty (40) days from the date hereof.

Edward M. Curran, United States District Judge.

In the United States District Court

[fols. 219-254] [File endorsement omitted]

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed December 21, 1953

Max R. Morris, plaintiff in the above entitled cause, in connection with his petition for an appeal to the Supreme Court of the United States, hereby assigns error to the entry of the order dismissing his complaint, and says that in the entry of said order the said District Court committed error to the prejudice of the plaintiff in the following particulars:

1. The Court erred in dismissing the plaintiff's complaint.

2. The Court erred in failing to determine that the Act of Congress of the United States of August 2, 1946, 60 Stat. 790, District of Columbia Code Title 5-701 et seq. (1951) is unconstitutional.

3. The Court erred in holding that the Act of Congress of the United States of August 2, 1946, 60 Stat. 790, District of Columbia Code Title 5-701 et seq. (1951) are constitutional.

Wherefore, plaintiff prays that the order of the District Court dismissing his complaint be reversed.

James C. Toomey, 910-17th Street, N. W., Washington 6, D. C. Joseph H. Schneider, 502-7th Street, S. W., Washington, D. C. Albert Ginsberg, 602-7th Street, S. W., Washington, D. C. Attorneys for Plaintiffs.

[fol. 255] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 256] IN THE SUPREME COURT OF THE UNITED STATES

No. 550

MAX R. MORRIS, Appellant,

vs.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER, et al., Defendants

STATEMENT OF POINTS TO BE RELIED UPON—Filed February 15, 1954

(A) Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court the points contained in its Assignment of Errors heretofore filed.

[fols. 257-259] Certificate of Service—(Omitted in Printing)

[fols. 260-263] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

[Title omitted]

APPELLEES' COUNTER-DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—(Omitted in Printing)

Certificate of Service [omitted in printing.]

[fol. 263a] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 550

MAX R. MORRIS, Deceased, Appellant,

vs.

ANDREW PARKER, JOHN A. REMON, JAMES E. COLLIFLOWER et al.

ORDER OF SUBSTITUTION—Filed June 7, 1954

On Consideration of the motion of counsel for the appellant to substitute Samuel Berman and Solomon H. Feldman, executors of the estate of Max R. Morris, deceased, as parties appellant in this cause,

It Is Ordered by this Court that the said motion be, and it is hereby, granted.

[fol. 264] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 22

SAMUEL BERMAN and SOLOMON H. FELDMAN, Executors of the Estate of Max R. Morris, Deceased,

v.

ANDREW PARKER, et al.

STIPULATION AS TO PRINTING OF RECORD—Filed July 28, 1954

It is stipulated by the parties to the above-cause as follows:

(1) That copies of the official redevelopment plan for southwest redevelopment project area B adopted October 24, 1952, and related papers bound together and attached to the affidavit of Carl R. Nolte, Exhibit 1 to motion to dismiss or in the alternative for summary judgment may be submitted to the Court as an appendix to appellees' brief

without the necessity of inclusion thereof in the printed record.

(2) That in the printing of record the following documents may be omitted:

(a) Memorandum of Points and Authorities in Support of Motion to Dismiss or in the Alternative for Summary Judgment and Attachments thereto — pages 14-32 of the transcript of record;

(b) Memorandum of Points and Authorities in Opposition to Motion of Defendants to Dismiss or in the Alternative for Summary Judgment and in Support of Motion of Plaintiff for Summary Judgment — pages 120-125 of the transcript of record;

[fols. 265-267] (c) Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Summary Judgment—pages 126-131 of the transcript of record;

(d) Opinion of the Supreme Court of Ohio in the State, ex rel. Bruestle, City Solicitor v. Rich, Mayor, et al. — pages 132-148 of the transcript of record;

(e) Article from Washington and Lee Law Review, Recent Slum Clearance and Urban Redevelopment Laws by Phillip H. Hill — pages 149-165 of the transcript of record;

(f) Exhibit A to Exhibit 3 in Support of Motion to Dismiss or in the Alternative for Summary Judgment, being the District of Columbia Redevelopment Act of 1945 — pages 33-55 of the transcript of record; and

(g) Exhibit C to Exhibit 3 in Support of Motion to Dismiss or in the Alternative for Summary Judgment, being the Housing Act of 1949 — pages 56-91 of the transcript of record.

Respectfully submitted, Simon E. Sobeloff, Solicitor General, Counsel for Appellees, The District of Columbia Redevelopment Land Agency, and National Capital Planning Commission; Vernon E. West, Counsel for Board of Commissioners, District of Columbia, by Chester H. Gray.

Joseph H. Schneider, Counsel for Appellant.

Date: July 27, 1954.

[fol. 268] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 550

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—Filed March 8, 1954

Appeal from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.